

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA



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In Attendance: COMMISSIONER CLIFFORD RECHTSCHAFFEN

ADMINISTRATIVE LAW JUDGES KARL J. BEMESDERFER and  
ROBERT M. MASON III, co-presiding

In the Matter of the Joint	)	ORDER TO SHOW
Application of Sprint Communications	)	CAUSE
Company L.P. (U-5112) and T-Mobile	)	
USA, Inc., a Delaware Corporation,	)	Application
For Approval of Transfer of Control	)	18-07-011
of Sprint Communications Company	)	
L.P. Pursuant to California Public	)	
Utilities Code Section 854(a).	)	
	)	CONSOLIDATED
	)	
	)	Application
And Related Matters.	)	18-07-012
	)	

REPORTERS' TRANSCRIPT  
VIRTUAL PROCEEDING  
September 20, 2021  
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Reported by: Doris Huaman, CSR No. 10538  
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I N D E X

WITNESSES:	PAGE
NEVILLE RAY	
Direct Examination By Mr.	21
Gelfand	
Examination By ALJ Bemederfer	47
Direct Examination By Mr.	57
Gelfand	
NEVILLE RAY	
Cross-Examination By Ms.	124
Taff-Rice	
Examination By Commissioner	206
Rechtschaffen	
Examination By ALJ Bemederfer	211
Examination By ALJ Bemederfer	213
Examination By ALJ Bemederfer	216
Redirect Examination By Mr.	218
Gelfand	
Examination By ALJ Bemederfer	219
JEFF BLUM	
Direct Examination By Ms.	226
Taff-Rice	
Cross-Examination By Mr. Gelfand	240
Exhibits:	Iden.    Evid.
OSC T-MOBILE-02	277
through OSC	
T-MOBILE-11	
OSC T-MOBILE 15	277
OSC T-MOBILE 27	278
OSC T-MOBILE 30	278
OSCD-01 through	278
OSCD-12	

VIRTUAL PROCEEDING

SEPTEMBER 20, 2021 - 10:01 A.M.

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ADMINISTRATIVE LAW JUDGE BEMESDERFER:

This is the time and place for an Order to Show Cause Hearing in A.18-07-011 and 18-07-012, the Joint Application of T-Mobile and Sprint for Approval of T-Mobile's Acquisition of Sprint and the Transfer of Certain Sprint Licenses to T-Mobile.

I'm Administrative Law Judge Karl Bemederfer. And I'll conduct today's hearing together with my colleague, Administrative Law Judge Robert Mason, and the assigned Commissioner in this proceeding, Commissioner Clifford Rechtschaffen.

T-Mobile is present at this hearing as a respondent to the Order to Show Cause. DISH Network Corporation, hereafter "DISH," is present today as a necessary party. The purpose of today's hearing is to determine if the Commission should penalize T-Mobile for a violation of Commission Rules of Practice and Procedure 1.1, which states -- the important part:

Any person who signs a pleading or brief, enters an appearance, or offers testimony at a hearing,

1                   agrees never to mislead the  
2                   Commission or its staff by an  
3                   artifice or false statement of  
4                   fact or law.

5                   This morning's hearing will focus  
6                   on statements made or omitted by T-Mobile  
7                   during the evidentiary hearings, and in  
8                   related proceedings, that proceeded Decision  
9                   20-04-008, the Commission Decision approving  
10                  the merger transaction with conditions, which  
11                  was issued on April 27th, 2020.

12                  Prior to that decision, T-Mobile  
13                  had pledged that no former Sprint customer  
14                  would suffer any service degradation  
15                  following the merger. Further, T-Mobile  
16                  represented that DISH would have up to three  
17                  years within which to complete migration of  
18                  the Boost wireless, hereafter "Boost,"  
19                  pre-paid customer base to the New T-Mobile 5G  
20                  network, which DISH would be using as a  
21                  virtual network operator during the build-out  
22                  of its own facilities-based network.

23                  Thus, it came as a surprise to the  
24                  Commission when on/or about July 1st, 2021,  
25                  T-Mobile announced that it would shut down  
26                  the legacy CDMA network used by Boost  
27                  subscribers at the end of this year. In  
28                  response to this announcement, DISH advised



1 the Commission that if the CDMA network is  
2 shut down at the end of this year, a  
3 substantial number of Boost customers will be  
4 left without wireless service. Whatever  
5 one's definition of service degradation may  
6 be, a complete loss of service qualifies.

7 The Order to Show Cause directs  
8 T-Mobile to address the following apparent  
9 violations of Rule 1.1:

10 T-Mobile made statements under oath  
11 indicating that, one, its CDMA network would  
12 be available to Boost customers until they  
13 were migrated to DISH's LTE or 5G services;

14 Two, maintaining service to the  
15 CDMA network during the Boost customer  
16 migration would not affect T-Mobile's 5G  
17 build-out;

18 Three, all former Sprint customers  
19 would have a seamless upgrade experience  
20 during the migration period;

21 And, four, DISH would have up to  
22 three years in which to complete Boost  
23 customer migration;

24 T-Mobile also omitted and/or  
25 provided misleading information regarding the  
26 fact that, five, Sprint's PCS spectrum was  
27 used to provide service to Boost customers on  
28 the CDMA network and the same spectrum blocks

1 would be required for the build-out of the  
2 T-Mobile 5G network.

3 Today's hearing will proceed as  
4 follows:

5 T-Mobile will make an opening  
6 statement, which I've been advised will be  
7 made by Mr. Gelfand. I will swear him in  
8 prior to his making that statement.

9 After the opening statement,  
10 T-Mobile will put out its witness, Neville  
11 Ray. He will then be questioned by Judge  
12 Mason, Commissioner Rechtschaffen, and me,  
13 followed by Counsel for DISH. At the  
14 conclusion of questioning for Counsel for  
15 Dish, Counsel for T-Mobile will have an  
16 opportunity for redirect examination of the  
17 witness.

18 After T-Mobile's testimony has been  
19 completed, DISH may make an opening  
20 statement. I have not been advised who might  
21 make such a statement or whether DISH will  
22 make such a statement.

23 I will swear in the witness for  
24 DISH. He will then be questioned by Judge  
25 Mason, Commissioner Rechtschaffen, and me,  
26 followed by Counsel for T-Mobile. At the  
27 conclusion of questioning by Counsel for  
28 T-Mobile and Counsel for DISH, they will have

1 an opportunity for redirect examination of  
2 the witness.

3 I would like to make a few general  
4 housekeeping remarks. As you've already  
5 heard in the lead-up to this hearing, it is a  
6 challenge to our court reporters to  
7 accurately transcribe a virtual proceeding.  
8 Accordingly, we will enforce the following  
9 guidelines:

10 Identify yourself whenever you  
11 speak. Use the raise-your-hand function of  
12 Webex to be recognized. Speak only when  
13 recognized by one of the presiding officers.  
14 Provide written copies of any prepared  
15 remarks for the reporters. And speak slowly  
16 and clearly. And do not speak over one  
17 another.

18 Commissioner Rechtschaffen, do you  
19 have any remarks you would like to add at  
20 this point?

21 COMMISSIONER RECHTSCHAFFEN: Thank you,  
22 Judge Bemederfer. I do not. My concerns in  
23 the areas of interest to me are reflected  
24 both in your opening remarks and in the joint  
25 assigned Commissioner Ruling and ALJ Order to  
26 Show Cause that gave rise to this hearing.

27 ALJ BEMESDERFER: Thank you,  
28 Commissioner.

1           Are there any questions about how  
2           this hearing will proceed?

3           (No response.)

4           ALJ BEMESDERFER: Hearing none, I will  
5           ask Mr. Gelfand to make certain attestations  
6           before delivering his opening statement.

7           Mr. Gelfand, do you agree to this  
8           evidentiary hearing being held via Webex?

9           MR. GELFAND: I do, your Honor.

10          ALJ BEMESDERFER: Do you agree to the  
11          witness testimony and exhibits being  
12          presented via Webex?

13          MR. GELFAND: Yes, your Honor.

14          ALJ BEMESDERFER: Do you agree to  
15          adhere to all the formal rules -- oh, I beg  
16          your pardon.

17          Do you agree to the oaths of remote  
18          witnesses being received by Webex  
19          communication?

20          MR. GELFAND: Yes, sir.

21          ALJ BEMESDERFER: Do you agree to  
22          adhere to all formal rules of decorum,  
23          including the prohibition against coaching  
24          witnesses?

25          MR. GELFAND: I do, your Honor.

26          ALJ BEMESDERFER: Do you agree that you  
27          will not make any recording of this  
28          proceeding?

1 MR. GELFAND: Yes, your Honor.

2 ALJ BEMESDERFER: Do you attest that  
3 you understand that any recording of a  
4 proceeding held by Webex and/or by  
5 teleconference, including screen shots or  
6 other virtual copying of a hearing, is  
7 absolutely prohibited?

8 MR. GELFAND: Yes, your Honor.

9 ALJ BEMESDERFER: Do you attest that  
10 you understand that a violation of these  
11 prohibitions may result in sanctions,  
12 restricted entry into future hearings, denial  
13 of entry to future hearings, or any other  
14 sanctions deemed necessary by the Commission?

15 MR. GELFAND: Yes, your Honor. I  
16 understand that.

17 ALJ BEMESDERFER: Finally, do you  
18 attest that you agree that during the  
19 evidentiary hearing, you will not use  
20 documents not previously shared with the  
21 opposing party or identified by the presiding  
22 officer?

23 MR. GELFAND: That is certainly my  
24 intention, your Honor.

25 May I please ask for one point of  
26 clarification, does that apply to impeachment  
27 exhibits that might be necessary but were not  
28 premarked?

1 ALJ BEMESDERFER: I believe you can use  
2 impeachment exhibits that were not premarked.

3 MR. GELFAND: Thank you, your Honor.  
4 Then, with that one caveat, I do agree with  
5 to that attestation.

6 Thank you.

7 ALJ BEMESDERFER: Thank you very much,  
8 Mr. Gelfand.

9 And would you now proceed to make  
10 T-Mobile's opening statement?

11 MR. GELFAND: Yes. Thank you.

12 And I would like to thank your  
13 Honors and the Commissioner for hearing from  
14 me today. It's a privilege for me to be able  
15 to appear before you and represent my client,  
16 T-Mobile, in this proceeding.

17 And these are prepared remarks, so  
18 we will send them to the court reporter. I  
19 guess we'll figure out how to do that at a  
20 break or at the end of the day.

21 ALJ BEMESDERFER: Thank you for that.

22 MR. GELFAND: Of course.

23 The Order to Show Cause is based on  
24 five assertions that T-Mobile allegedly made  
25 in prior proceedings before this Commission.  
26 There is no basis to find a violation of  
27 Rule 1.1 for any of the five. And,  
28 respectfully, your Honors, this should not be

1 a close call.

2 In fact, as we explain in our  
3 response, T-Mobile did not even make the  
4 assertions that are alleged on page 8 of the  
5 Order to Show Cause. In some instances,  
6 T-Mobile repeatedly said the opposite of what  
7 is alleged. The order seems to infer these  
8 assertions from selected record evidence,  
9 sometimes from sentence fragments. This is a  
10 tenuous basis for a Rule 1.1 allegation and  
11 cannot support a finding of violation here  
12 for the reasons explained in our response.  
13 T-Mobile was candid, truthful, and  
14 comprehensive in its submissions and  
15 testimony during the proceedings.

16 Here's how we intend to use our time  
17 today:

18 After these initial remarks, we will  
19 call our only witness, Neville Ray. And we  
20 hope to complete his direct examination  
21 before the lunch break. Mr. Ray is the  
22 President of Technology for T-Mobile and was  
23 previously before the Commission on two  
24 occasions: In February 2019, and in  
25 December 2019. Some of his testimony from  
26 those hearings bears on the issues before the  
27 Commission today.

28 For context, Mr. Ray will explain a

1 bit about the merger and what he and the  
2 company presented to the Commission in the  
3 prior proceedings. Our main focus of those  
4 proceedings was how the combination of  
5 T-Mobile's and Sprint's networks would  
6 accelerate the move to 5G, dramatically  
7 improve wireless service to millions of  
8 Californians, and increase competitive  
9 pressure on Verizon and AT&T. T-Mobile  
10 wanted the Commission to understand these  
11 public interest benefits and, therefore, put  
12 into the record a massive body of evidence to  
13 demonstrate that they would come to pass.  
14 And the company is delivering beautifully on  
15 this promise.

16 Mr. Ray will explain that millions  
17 of Californians have 5G and vastly improved  
18 wireless service today as a result of the  
19 merger. The case that T-Mobile put before  
20 the Commission was compelling and truthful.

21 Now, an important part of background  
22 here relates to T-Mobile's agreement with the  
23 U.S. Department of Justice to divest Sprint's  
24 pre-paid business, known as Boost to DISH.  
25 This, of course, was a main focus of the  
26 Commission's December 2019 hearing. The  
27 Commission wanted to be satisfied that the  
28 divestiture agreement would not impair



1 T-Mobile's ability to deliver on the plans it  
2 had previously presented to the Commission.

3 Mr. Ray will discuss the divestiture  
4 and that December 2019 hearing today. He  
5 will explain that the information T-Mobile  
6 provided the Commission was accurate. After  
7 providing this context, we will walk Mr. Ray  
8 through each of the five assertions on page 8  
9 of the Order to Show Cause.

10 We will address the assertions in  
11 the same order in which they appear. But I  
12 would like to take a moment now and summarize  
13 how we see the issues dividing up:

14 There are two categories of issues.  
15 And, your Honor, I think I have them numbered  
16 just a bit differently from your Honor in  
17 your opening introduction to the hearing. I  
18 have them numbered as 1 through 5, tracking  
19 page 8 of the Order to Show Cause. So when I  
20 refer to an assertion number, those are the  
21 numbers I'm referring to.

22 So assertions 1, 4, and 5 on page 8  
23 of the order are based on an incorrect  
24 assumption that T-Mobile somehow guaranteed  
25 to the Commission that it would delay the  
26 shutdown of Sprint's antiquated CDMA network  
27 for three years, no matter what, essentially,  
28 at DISH'S discretion. T-Mobile gave no such

1 guarantee and none can be found in the record  
2 of these proceeds.

3 T-Mobile certainly talked about the  
4 three-year period. But this was the period  
5 of time that T-Mobile had to complete the net  
6 -- the work necessary for migration of  
7 customers from CDMA to T-Mobile's network.  
8 It did not give DISH an unfettered right to  
9 force T-Mobile to string things out for the  
10 full three years. Thus, for example,  
11 T-Mobile was allowed to hold onto 800  
12 megahertz spectrum to support CDMA customers  
13 for three years if it needed the full three  
14 years.

15 But T-Mobile was candid about its  
16 plan to complete the migration in less than  
17 three years. In testimony that is  
18 dispositive on this point, Mr. Ray said the  
19 following in his December 2019 supplemental  
20 testimony on page 13, quote:

21 New T-Mobile planned and still  
22 does plan to use that spectrum --  
23 referring to 800 megahertz --  
24 exclusively to support former  
25 Sprint customers during the  
26 anticipated three-year migration  
27 period and to complete the  
28 migration of Sprint customers

1 before this deadline.

2 Mr. Ray reiterated this point  
3 during his testimony at the December hearing,  
4 page 1375, quote:

5 We are very, very confident that  
6 we will be at a complete migration  
7 of customers onto the New T-Mobile  
8 network within that three-year  
9 period. End quote. ]

10 Mr. Ray also made clear during the  
11 December 2019 hearing that prior statements  
12 in the record about maintaining CDMA and  
13 ensuring that Sprint customers were migrated  
14 before shutdown did not apply to the divested  
15 Boost customers. This is because T-Mobile  
16 can only control its own actions and cannot  
17 take responsibility for DISH doing what it  
18 was obligated to do for migration, which was  
19 to ensure that its customers had compatible  
20 devices.

21 Mr. Ray said the following on pages  
22 20 to 21 of his December 2019 supplemental  
23 testimony, quote:

24 These commitments -- in other  
25 words the divestiture of Boost to  
26 DISH -- did not exist at the time  
27 I provided that testimony, and  
28 thus, my prior testimony did not

1 account for the divestiture of the  
2 Sprint prepaid business. In light  
3 of these commitments, my prior  
4 testimony would now have to be  
5 modified to include only Sprint's  
6 CDMA customers who are not  
7 divested.

8 It would be incorrect and fundamentally  
9 unfair, in light of this testimony, to find  
10 that T-Mobile somehow promised to maintain  
11 CDMA for three years so that DISH could take  
12 as much time to migrate Boost customers as it  
13 wished. That is not to say that T-Mobile  
14 disavowed all responsibility for Boost. Far  
15 from it. There was a very clear division of  
16 responsibility that had been worked out among  
17 the Justice Department, T-Mobile and DISH,  
18 and that was disclosed to this Commission.  
19 Not just disclosed but explained and  
20 supported with the underlying documentation.

21 The agreed framework required T-Mobile  
22 to get the network ready for migration, which  
23 in California means investing billions of  
24 dollars to visit thousands of towers and  
25 install new equipment. It required T-Mobile  
26 to give DISH six months' notice of CDMA  
27 shutdown.

28 Ultimately T-Mobile gave 15 months.

1 And it required DISH to upgrade devices for  
2 its BOOST customers as needed to complete  
3 migration. What this process did not require  
4 and what was not requested by the DOJ or DISH  
5 and not represented to this Commission was an  
6 absolute obligation on T-Mobile's part to  
7 maintain CDMA for three years no matter what.

8         This is a recent invention by DISH.  
9 T-Mobile's statements about this construct  
10 were accurate. T-Mobile would have three  
11 years to complete its work but not the  
12 obligation to maintain CDMA that entire time.  
13 T-Mobile planned for and told the Commission  
14 that it expected the migration to be complete  
15 before that time. The applicable timing  
16 obligation was noticed to DISH which T-Mobile  
17 complied with. And if DISH complied with its  
18 obligation to upgrade devices as needed, its  
19 BOOST customers would be migrated  
20 successfully before the CDMA shutdown.

21         In fact, they would move to a vastly  
22 superior service well before the end of three  
23 years, an indisputably good outcome for them.  
24 This was the design and intent of the process  
25 that was painstakingly worked out among the  
26 Justice Department, T-Mobile and DISH, and it  
27 was accurately explained to this Commission.

28         The other category of assertions in the

1 order to show cause relate to PCS spectrum.  
2 The order says in assertions 2 and 3 on page  
3 8 that T-Mobile indicated to the Commission  
4 that PCS was not required for CDMA and would  
5 not be used for 5G. In fact, the opposite  
6 happened. T-Mobile repeatedly put  
7 information into the record showing the  
8 Commission both that PCS was used for CDMA  
9 and that it would be used for 5G. Assertions  
10 2 and 3 have no basis. We will develop these  
11 and other points through Mr. Ray's testimony  
12 and record evidence, and we respectfully ask  
13 the Commission conclude after this hearing  
14 that T-Mobile complied with Rule 1.1.

15 I just want to say a word about DISH  
16 before calling Mr. Ray to the stand. We, of  
17 course, respect the Commission's decision to  
18 allow DISH to call a witness, but we maintain  
19 that DISH has nothing to offer this tribunal  
20 that would be of assistance to the Commission  
21 in deciding the narrow issues raised in the  
22 order to show cause. I have no doubt that  
23 DISH's witness will offer testimony about how  
24 he supposedly understood T-Mobile's prior  
25 testimony to equate to some kind of promise  
26 that T-Mobile would be maintained for three  
27 years. So what? The Commission can review  
28 the record for itself and decide whether such

1 a promise was made. It does not need a  
2 biased and self-interested witness to take  
3 snippets of the record and tell the  
4 Commission how they should be interpreted.

5 Thank you, your Honors. I'm ready to  
6 proceed with Mr. Ray unless your Honors or  
7 Commissioner have any questions before we do  
8 so.

9 ALJ BEMESDERFER: I have no questions,  
10 Mr. Gelfand. So I will now proceed to swear  
11 Mr. Ray.

12 MR. GELFAND: Waiting for Mr. Ray to  
13 appear on the camera, if he's not already.

14 ALJ BEMESDERFER: Oh, there you are.  
15 Mr. Ray, do you solemnly state under penalty  
16 of perjury that the testimony given in the  
17 case now pending before this Commission shall  
18 be the truth, the whole truth and nothing but  
19 the truth?

20 THE WITNESS: I do.

21 ALJ BEMESDERFER: Do you attest that  
22 you will testify based on your own knowledge  
23 and memory free from external influences or  
24 pressures?

25 THE WITNESS: I do, your Honor.

26 ALJ BEMESDERFER: Do you attest that  
27 you will adhere to all formal requirements of  
28 testifying under oath including the

1 prohibition against being coached?

2 THE WITNESS: I do, your Honor.

3 ALJ BEMESDERFER: Do you attest that  
4 you will only refer to materials provided by  
5 the parties, exhibits premarked and  
6 identified by the parties and previously  
7 shared with the opposing party?

8 THE WITNESS: I do, your Honor.

9 ALJ BEMESDERFER: Do you attest that  
10 you will not make any recording of this  
11 proceeding?

12 THE WITNESS: Yes, your Honor.

13 ALJ BEMESDERFER: Do you attest that  
14 you understand that any recording of a  
15 proceeding held by Webex including  
16 screenshots or other visual copying of the  
17 hearing is absolutely prohibited?

18 THE WITNESS: I do, your Honor.

19 ALJ BEMESDERFER: Do you attest that  
20 you understand the violation of these  
21 prohibitions may result in sanctions  
22 including removal from the evidentiary  
23 hearing, restricted entry to future hearings,  
24 denial of entry to future hearings or any  
25 other sanctions deemed necessary by the  
26 Commission?

27 THE WITNESS: I do, your Honor.

28 ALJ BEMESDERFER: Do you attest that



1 you will not engage in any private  
2 communication by phone, text, email or any  
3 other mode of communication while under oath  
4 and being examined?

5 THE WITNESS: I do, your Honor.

6 ALJ BEMESDERFER: And finally, do you  
7 attest that if you experience any attempt to  
8 tamper with your testimony you will report  
9 the occurrence to the presiding officer  
10 immediately?

11 THE WITNESS: Yes, your Honor.

12 ALJ BEMESDERFER: Mr. Gelfand, your  
13 witness.

14 NEVILLE RAY, called as a witness by  
15 T-Mobile USA, Inc., having been sworn,  
testified as follows:

16 MR. GELFAND: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. GELFAND:

19 Q You've already done this, Mr. Ray,  
20 but just for the record, could you state your  
21 name?

22 A Neville Ray.

23 Q By whom are you employed?

24 A T-Mobile.

25 Q What is your position with  
26 T-Mobile?

27 A I am the president of technology.

28 Q How long have you been with

1 T-Mobile?

2 A I have been with T-Mobile for 21  
3 years, and the prior five years I worked for  
4 Pacific Bell Wireless in California.

5 Q Do you recall being involved in  
6 proceedings before this Commission relating  
7 to the T-Mobile/Sprint merger?

8 A I do.

9 Q Do you recall providing written  
10 testimony and testifying in person in  
11 February 2019 in support of the merger  
12 application?

13 A Yes, I do.

14 Q Do you recall providing written  
15 testimony and testifying in person in  
16 December 2019 in support of the merger  
17 application?

18 A I do. That was just before the  
19 trial ended.

20 Q And the December 2019 hearing was  
21 related to the effects of a divestiture that  
22 T-Mobile had agreed to with the Department of  
23 Justice, correct?

24 A Correct.

25 Q Can you remind the judges and the  
26 Commissioner about the divestiture that  
27 T-Mobile had agreed to?

28 A Well, there were several elements

1 to the divestiture. First and foremost, we  
2 were divesting approximately 9 million Sprint  
3 prepaid customers, BOOST customers to DISH.  
4 So that was the first piece. Once divested,  
5 we would support those customers, their  
6 wireless use on the T-Mobile network under an  
7 MVNO arrangement. Basically, we support  
8 services, and DISH would compensate us for  
9 the customer's use on the network. There was  
10 also a transition services agreement. We  
11 would support DISH on many elements of  
12 running this business, billing, customer  
13 care, a series of obligations that T-Mobile  
14 would fulfill.

15 Then there were some network  
16 elements. Under the divestiture, we would  
17 provide DISH with 800 megahertz spectrum at  
18 the three-year point post the close of the  
19 transaction. There were also several  
20 obligations that T-Mobile made and that it  
21 was contractually committed to provide in  
22 terms of providing DISH access to T-Mobile  
23 cell sites that it did not -- no longer -- no  
24 longer required post the decommissioning of  
25 cell sites. That obligation involved  
26 providing access to DISH to take the sites  
27 and, if they so chose, some of the equipment  
28 that was provided on those sites. I think

1     that's my summary.

2           Q     Okay. Thank you. And that  
3     arrangement that you just described was  
4     agreed to with the United States Department  
5     of Justice as part of a court order, correct?

6           A     Correct. The contractual  
7     arrangement was between T-Mobile and DISH,  
8     and the Department of Justice was intimately  
9     involved in constructing and all of the  
10    elements of the divestiture arrangement.

11          Q     Do you recall that what you just  
12    described and its impact on the T-Mobile  
13    merger plans was the subject of the December  
14    2019 hearing before the Commission?

15          A     Yes. We came in February to  
16    outline a combination of T-Mobile and Sprint  
17    and all of the benefits --

18          ALJ MASON: Excuse me, Mr. Ray. I just  
19    got a chat message that Mr. Ray is coming  
20    through a little quietly. I don't know if  
21    there's a way to perhaps boost the microphone  
22    at all.

23          MR. GELFAND: We will do that. Thank  
24    you. Sorry about that.

25          ALJ MASON: No, no. It's no problem.  
26    We're all dealing with the technology.

27          MR. GELFAND: Yeah. And we do  
28    apologize. ]

1           Q    I think you were beginning to say  
2   what the February hearing had been about.  
3   You already said what the December hearing  
4   was about, just to remind you where you were.

5           A    Yes.  So the February hearing, we  
6   came to the Commission to outline the  
7   culmination of T-Mobile and Sprint, what it  
8   entailed, and the benefits it would bring to  
9   the nation and state of California.  There  
10   was no divestiture arrangement in place with  
11   DISH or the Department of Justice at that  
12   point in time, and then we came in December  
13   to outline the elements of the divestiture  
14   and what that would entail.

15           MR. GELFAND:  We are here today because  
16   it has been alleged in an order to show cause  
17   that T-Mobile may have made false or  
18   misleading statements or misleadingly omitted  
19   information about five topics during the  
20   merger proceeding before the Commission.  
21   Those five alleged topics are set forth on  
22   page 8 of the Order to Show Cause dated  
23   August 13, 2021.

24                   Have you seen that order?

25           A    I have, yes.

26           Q    And what was your reaction to  
27   reading that order?

28           A    Well, we spent an incredible amount

1 of time coming before the Commission on two  
2 occasions to clearly outline the benefits of  
3 this transaction and how it would unfold, and  
4 the implications of the divestiture. We have  
5 committed hours of verbal, volumes of written  
6 testimony. It was a very large effort, and  
7 we sought to make the terms of the  
8 transaction and the subsequent divestiture  
9 very clear to the Commission.

10 So it was with some surprise and  
11 dismay that I saw the OSC and the complaint.  
12 Clearly, it was never our intent or my intent  
13 to mislead the Commission in any manner or  
14 form as to how this transaction and  
15 subsequent divestiture would unfold. That  
16 was not our intent. I do believe we never  
17 made false or misleading statements or  
18 omitted information from the record.

19 Q Were you truthful during your  
20 testimony?

21 A Absolutely.

22 Q Do you believe T-Mobile made any  
23 false or misleading statements?

24 A I do not.

25 Q Did you ever feel T-Mobile was  
26 trying to hide something?

27 A Absolutely not.

28 Q Okay. I want to go back to the

1 merger now and you're role in it. Could you  
2 just quickly summarize for the Commission  
3 what role you played in the planning for the  
4 T-Mobile-Sprint merger?

5 A Well, as the President of  
6 Technology, my responsibility is to oversee  
7 the team that runs and manages our network.  
8 So in relation to this transaction, I was  
9 responsible for the planning of the  
10 activities, most of the material that was  
11 submitted for approval of the transaction,  
12 and, subsequently, of course, to deliver on  
13 that plan and deliver on the benefits of 5G  
14 that we are committed to making.

15 Q What were those benefits of the 5G  
16 network as you explained it to the  
17 Commission?

18 A Well, I think there were many. I  
19 will try and not talk too long on this point,  
20 but, obviously, the combination of T-Mobile  
21 and Sprint was going to bring the capability  
22 with 5G services to the US, but not --  
23 neither of the two satellite companies could  
24 deliver, but neither could, you know, the  
25 competitive set in the U.S. This transaction  
26 was about combining unique asset sets that  
27 could allow a rapid acceleration of 5G  
28 services and capabilities, not just across

1 the US, but very clearly in California.

2 Most consumer and customer benefits  
3 were many in number. 5G is a very powerful  
4 technology, very high speeds, capacity, and  
5 quality to US consumers. Several aspects of  
6 the transaction that we outlined with the  
7 Commission and with the federal agencies  
8 included bringing material competition in the  
9 home broadband market where 5G can now  
10 provide home broadband and fixed wireless  
11 services in a way that prior generations of  
12 technology have not been able.

13 We have also committed to provide  
14 material improvements in reach, coverage, and  
15 quality of this network, including rural  
16 parts of many states, including California.

17 The last point I will mention is  
18 that our plan was always to fuel 5G, and  
19 thereby generate more competition in the  
20 United States wireless market, and I do not  
21 believe it's unclear to anybody the level of  
22 competition and investment that our  
23 transaction has stimulated in the U.S. market  
24 place over the last 18 months.

25 Q And these benefits you just  
26 described, they were presented to the  
27 Commission in 2019?

28 A They were in the material detail.



1           Q    Can you just describe at a general  
2   level without revealing any confidential  
3   information because we're in public session  
4   now what efforts you are making since the  
5   merger to carry out this network combination?

6           A    Well, once we secured approval of  
7   the transaction, then we set about building  
8   this powerful very capable, high quality 5G  
9   network. We have been extremely busy making  
10  sure that we can meet plans and the  
11  commitments that we made to the federal  
12  agencies, and in many ways to this  
13  Commission.

14                This 5G network requires a lot of  
15  investment and massive amounts of work, and  
16  me and my team have been very busy upgrading  
17  the wireless network of T-Mobile so that it  
18  can fulfill the commitments and obligations.

19           Q    Again, without revealing  
20  confidential information because we're in  
21  public session, how is it going? Just  
22  provide a quick update.

23           A    It is going well. We have been  
24  meeting our plan. We have been rolling out  
25  5G technology at a great pace. We have been  
26  upgrading the network at a material pace  
27  also.

28           MR. GELFAND: I just need to take a

1 break, your Honor. I'm getting a funny  
2 message on my screen.

3 ALJ BEMESDERFER: We'll go off the  
4 record for a moment.

5 (Off the record.)

6 ALJ BEMESDERFER: Back on the record.

7 BY MR. GELFAND:

8 Q I do apologize for that  
9 interruption because that was an important  
10 answer actually, and I want to come back to  
11 it, and this might be a little repetitive.

12 Can you just say again how's it  
13 going? How are you doing with this network?

14 A We have been incredibly busy  
15 upgrading this network and rolling out 5G at  
16 this point in time. Approximately 18 months  
17 after the transaction closed, we have good  
18 progress. We are on point.

19 Q And is this as was represented to  
20 the Commission in 2019?

21 A Yes.

22 Q You explained the plan, you're  
23 carrying out the plan, and it's going as  
24 planned?

25 A That's correct.

26 Q Did the sprint network employ a  
27 technology known as CDMA?

28 A Yes, it did.

1           Q    What is CDMA?

2           A    CDMA is a legacy-dated technology.  
3   It was introduced into wireless services in  
4   the United States in the 1990s. The acronym  
5   stands for Code Division Multiple Access. So  
6   that's the technology. As I said, it was  
7   rolled out in the 90s. It's a very old  
8   technology at this point in time. It's a  
9   very poor service and network in comparison  
10  to 4G and very clearly 5G network services  
11  that are now being launched.

12               Voice services are a part of CDMA,  
13  also data services, and the data services  
14  supported for consumers and customers by a  
15  CDMA network are literally a shadow of what  
16  you can secure with a LTE network and/or a 5G  
17  network.

18           Q    To provide a little more detail on  
19  that for the Commission, how does CDMA  
20  compare with 4G and 5G?

21           A    Both the quality and reliability of  
22  these networks is now very old. It's very  
23  challenging to maintain CDMA networks.  
24  Speeds on data services on a CDMA network are  
25  typically in the one- to  
26  two-megabytes-a-second rate. Very slow data  
27  speeds. With LTE, you would see speeds in  
28  30-plus-megabytes-per-second range; so

1 multiple orders of magnitude or several  
2 times, 30 times, 20 times faster services on  
3 an LTE network.

4 CDMA is also a very old technology.  
5 If you look, for example, at some of the  
6 voice services, one important aspect of voice  
7 services is 911 calls, and technology has  
8 moved on since the era of 3G. And now  
9 wireless networks can pinpoint the location  
10 of a wireless calling 911 with high accuracy.  
11 That is not the case with CDMA. The accuracy  
12 is materially maybe 50 percent less than you  
13 can support on an LTE network today.

14 Q So the consumer is driving down the  
15 road in the middle of the night; they don't  
16 know exactly where they are; they have an  
17 accident; they call 911; CDMA would tell the  
18 first responders generally where they are,  
19 but the more recent technologies would  
20 pinpoint it; right?

21 A That's correct. CDMA technologies  
22 are not great. Voice quality is okay at  
23 best. And as I mentioned, data services are  
24 a poor shadow of 4G and 5G.

25 Q Is there also a difference in terms  
26 of the efficiency with which spectrum can be  
27 deployed by the network on CDMA versus 4G or  
28 5G?

1           A     Absolutely. 2G and 3G technology  
2     are very spectrally inefficient. So LTE was  
3     a big move that spectral efficiency allows  
4     you to support more data and higher speeds,  
5     and, clearly, with the advent of 5G spectral  
6     efficiency has moved forward materially.

7                     Again, so the byte type, if we want  
8     to call it that, is way more efficient and  
9     the utilization of spectrum on a  
10    per-megahertz basis -- that's how we measure  
11    spectrum, megahertz of volume on a  
12    per-megahertz basis, 4G and 5G services are  
13    materially more efficient than CDMA.

14           Q     So simply, moving spectrum --

15           ALJ MASON: I don't mean to interrupt.

16                     Counsel, this is all very helpful  
17    background about the merger and the process  
18    and the 5G system. Can we accelerate the  
19    examination and get to the actual OSC issues  
20    that Mr. Ray is going to address?

21           MR. GELFAND: Yes, your Honor. I'll  
22    try to do that. We do think the background  
23    is relevant because it informs the questions  
24    that were asked in the December 2019  
25    hearings, but I appreciate the point, your  
26    Honor, and we'll do exactly that.

27           ALJ MASON: Thank you.                     ]

28           MR. GELFAND: In fact, your Honor, this

1 would be a good moment to take our  
2 confidential session. We're only going to do  
3 this once during Mr. Ray's testimony --

4 (Audio connection lost.)

5 (Reporter clarification.)

6 (Off the record.)

7 ALJ BEMESDERFER: All right. Back on  
8 the record. At this point, I believe we are  
9 in our confidential session.

10 (Whereupon, the following material  
11 was placed under seal by direction of  
ALJ Bemederfer.)

12 (Begin sealed material.)

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(End sealed material.)

ALJ BEMESDERFER: All right, Mr.  
Gelfand. You may continue your direct  
examination at this point.

MR. GELFAND: Thank you, your Honor.  
Let me just make sure that the Commission and  
the judges can hear the -- Mr. Ray, can you  
just do a sound check.

THE WITNESS: Yes. Sound check.

1           MR. GELFAND:   Okay.   Did that come  
2   through?

3           MS. TOLLER:   Yes.   Thumbs up from the  
4   Commissioner.

5           MR. GELFAND:   All right.   Thank you.

6           Q   All right.   I want to return to the  
7   divestiture agreement with the Justice  
8   Department that we talked about a few minutes  
9   ago.   And as part of that arrangement -- I  
10   think you alluded to this -- but did DISH  
11   enter into an MVNO agreement with T-Mobile?

12          A   They did.

13          Q   And that was something that  
14   T-Mobile negotiated with DISH?

15          A   Negotiated with DISH.   There was  
16   some oversight by the Department of Justice,  
17   but it was an agreement that was structured  
18   with DISH, yes.

19          Q   What is --

20          ALJ MASON:   Excuse me.   And "MVNO"  
21   stands for what?

22          THE WITNESS:   Mobile Virtual Network  
23   Operator.

24          ALJ MASON:   Thank you.

25   BY MR. GELFAND:

26          Q   And just explain to the judges and  
27   the Commissioner, if you would, what that is  
28   just at a high-level?   What is an MVNO

1 agreement?

2           A     It's an agreement whereby DISH's  
3 Boost customers could utilize network  
4 services provided by T-Mobile and they would  
5 thereby pay T-Mobile for those services  
6 simply.

7           Q     And in this particular case, this  
8 MVNO agreement has a title, which I'll just  
9 read: Master network services agreement or  
10 MNSA. Is that the same thing as the MVNO  
11 agreement with DISH?

12           A     Yes.

13           Q     So if I refer to MNSA or the MVNO  
14 agreement, that's the same then?

15           A     The terms are synonymous. I  
16 believe so.

17           Q     What was the term of the MNSA with  
18 DISH?

19           A     Seven years.

20           Q     And now I'm going to show you a  
21 section of this MVNO agreement. I have some  
22 questions about it. And the reason I'm  
23 asking these questions, your Honors, is  
24 because this was put into the record of the  
25 Commission proceedings. And by asking about  
26 the agreement itself, that will inform what  
27 the Commission saw and heard about in  
28 December of 2019. This is --

1 MS. TAFF-RICE: This is Anita Taff-Rice  
2 representing DISH.

3 I just wanted to make sure -- the  
4 MNSA is a confidential document. I wanted to  
5 shake sure we're not going to stray into  
6 anything that's content in that confidential  
7 document.

8 MR. GELFAND: I don't think it is  
9 confidential. The only section we're going  
10 to look at -- and we will redact the others  
11 from any display or discussion -- is Section  
12 2.2(c), which is the notice provision and the  
13 provision that imposes on DISH the obligation  
14 that we've been talking about already. And I  
15 believe --

16 MS. TAFF-RICE: Your Honor, may I ask  
17 Mr. Blum if that's a confidential section? I  
18 believe he knows that better than I.

19 MR. BLUM: Those two aren't. We're  
20 okay with that. Thank you.

21 ALJ BEMESDERFER: All right. Let me  
22 just again remind people to speak one at a  
23 time. All right. So Mr. Blum has said he  
24 has no problem with that. So please  
25 continue, Mr. Gelfand.

26 MR. GELFAND: Okay. And for good  
27 order, your Honor, this is OSC T-Mobile 2.  
28 That's the exhibit -- the OSC exhibit. And

1 it was in a -- it is a Section 2.2(c), which  
2 was a section of Annex 1 to the MNSA, and  
3 that had been submitted to the Commission as  
4 Attachment G, like George -- Attachment G to  
5 Mr. Ray's supplemental testimony in December  
6 of 2019. So this was previously submitted to  
7 the Commission.

8 Q Mr. Ray, I want to cover three --  
9 the three sentences of this section one at a  
10 time. And the first sentence says, quote:  
11 T-Mobile will provide DISH with  
12 reasonable advance notice of at  
13 least six months prior to the  
14 shutdown of the legacy network in  
15 any market.

16 Can you explain -- end quote. Can you  
17 explain to the Commission what was the  
18 purpose of that sentence of this provision?

19 A This sentence was very clear that  
20 we had an obligation to provide minimum  
21 notice period of six months to DISH prior to  
22 the shutdown of legacy network there is  
23 synonymous with CDMA network. That's what  
24 was being discussed in this section. And so  
25 we outlined the term within which DISH would  
26 be responsible to meet the notice obligation  
27 around six months. We actually provided DISH  
28 more than a year, actually -- 15 months

1 actually passed the 6 months that's stated  
2 here in this clause.

3 Q You might have misspoken. I think  
4 you said provided that DISH was responsible  
5 for six months' notice. Did you mean  
6 T-Mobile was responsible to give six months'  
7 notice?

8 A I'm sorry if that was my testimony.

9 Q Okay.

10 A T-Mobile was responsible to provide  
11 DISH notice the minimum of six months, and  
12 T-Mobile actually provided DISH 15-months  
13 notice.

14 Q And it actually says, "reasonable  
15 notice of at least six months," right?

16 A It does.

17 Q And you provided 15. Is that your  
18 testimony?

19 A We did provide 15-months notice,  
20 two-and-a-half times the 6 months' period  
21 that was stated here.

22 Q And you alluded to this, but just  
23 to re -- eliminate any doubt, this is talking  
24 about the legacy network shutdown, and that  
25 includes the shutdown of CDMA? Do I have  
26 that right?

27 A Yes. Legacy network here refers to  
28 shutting down the CDMA network.

1           Q    Mr. Ray, to your recollection, was  
2   there any other provision in the MNSA that  
3   addressed the timing of CDMA shutdown?

4           A    None.

5           Q    Is there any contractual commitment  
6   in the MNSA to your knowledge that T-Mobile  
7   would maintain the Sprint CDMA network for at  
8   least three years?

9           A    Absolutely not.

10          Q    Are you aware of any attempt by  
11   DISH or by the Justice Department at the time  
12   this agreement was negotiated to get a  
13   commitment from T-Mobile to maintain the  
14   Sprint CDMA network for at least three years?

15          A    No. This agreement was negotiated  
16   and agreed between T-Mobile and DISH with the  
17   Department of Justice, and the notice  
18   provision was very clear at six months. And  
19   there was never a mention or discussion  
20   maintaining the CDMA network for three years.

21          Q    Do you recall if anyone from DISH  
22   ever communicated to you that they believed  
23   that T-Mobile would maintain the Sprint CDMA  
24   network for at least three years? And I'm  
25   using the time frame now of when this was  
26   negotiated.

27          A    Absolutely not. This was -- again,  
28   I can repeat my testimony, but DISH and



1 T-Mobile agreed to this contractual  
2 arrangement with the Department of Justice.  
3 And the only provision regarding CDMA  
4 shutdown was that T-Mobile would provide DISH  
5 a reasonable notice period of at least six  
6 months.

7 Q And --

8 ALJ BEMESDERFER: Let me ask -- let me  
9 ask a question here. And I'm sorry to  
10 interrupt you, Mr. Gelfand. But I find this  
11 a little confusing.

12 Mr. Ray, could T-Mobile have issued  
13 the six-month notice one day after signing  
14 that agreement?

15 THE WITNESS: In theory,  
16 hypothetically, your Honor, we could have.  
17 We did not.

18 ALJ BEMESDERFER: Would that have been  
19 a reasonable notice?

20 THE WITNESS: That was the agreement  
21 that had been reached between the two  
22 parties, your Honor. And when this agreement  
23 was being negotiated, the original statement  
24 and agreement was going to be on three  
25 months' notice, and DISH requested that that  
26 would be extended to six. We did not --

27 ALJ BEMESDERFER: My question to you  
28 is -- my question to you, as an engineer

1 intimately familiar with the issues involved,  
2 would a six-month notice issued a day after  
3 the hearing -- the agreement was signed, in  
4 your view, would that have been reasonable  
5 notice?

6 THE WITNESS: In certain scenarios and  
7 circumstances, your Honor, absolutely. There  
8 are many instances where there are small  
9 markets and small sections of CDMA operation  
10 with next to no usage or customers upon them.  
11 And so it would have been perfectly practical  
12 and pragmatic in some areas to do that. We  
13 did not. And we did not issue any notice for  
14 approximately six months post of the  
15 transaction. It was October of last year.  
16 And at that point in time, we provided 15  
17 months of notice, not 6. So...

18 ALJ BEMESDERFER: I'm aware of that --  
19 I'm aware of the timetable here. And --  
20 well, I'll stop there. I don't want to  
21 interrupt Mr. Gelfand any more than I already  
22 have. Go ahead, please.

23 MR. GELFAND: Your Honor, I appreciate  
24 being interrupted. It gives us guidance on  
25 what is of interest to your Honor and to the  
26 Commission. So we appreciate it. Your  
27 Honor, I don't know if we're going to have an  
28 opportunity to either have a summation or a

1 post-hearing briefing, but I would like to  
2 have an opportunity to address this question  
3 that I think was implicit in your question of  
4 whether the notice was reasonable and what is  
5 reasonable in this. We don't dispute --

6 ALJ BEMESDERFER: Could you address  
7 that question -- and I'll consider the  
8 request for post-hearing brief. But if you  
9 address that question, I think I would want  
10 you to address the expectations of the  
11 Department of Justice since this was  
12 negotiated with the Department of Justice.  
13 And my understanding is that the  
14 reasonableness criterion was in accordance  
15 with the desires of the DOJ.

16 So while I appreciate Mr. Ray's  
17 testimony that there are maybe micro markets  
18 in which the notice given one day after the  
19 agreement was signed might conceivably be  
20 thought of as reasonable, I am highly  
21 skeptical that the Department of Justice  
22 would share that view. So I leave it with  
23 that, and I will take your remark as a motion  
24 for post-hearing briefs and I will consider  
25 it.

26 MR. GELFAND: Thank you, your Honor.

27 ALJ BEMESDERFER: Now, I interrupted  
28 you long enough.

1           MR. GELFAND: Thank you, your Honor. I  
2 just note in response to that, if I might,  
3 that, first of all, T-Mobile has a very large  
4 obligation itself to get the network ready.  
5 So they can't give the notice until they know  
6 their job is done. But whether it's  
7 reasonable notice or not -- and obviously we  
8 think it is, and we've had a debate with  
9 other agencies about that. We think  
10 15-months notice was excellent. And you  
11 know, we can talk about that in other  
12 settings. But that doesn't inform whether a  
13 false statement was made in December of 2019.  
14 And it doesn't equate -- does not equate to  
15 there being a promise or a guarantee that  
16 this network would absolutely be maintained  
17 for three years no matter what. The  
18 reasonableness of the notice does not depend  
19 entirely on whether DISH says they want more  
20 time or not. The reasonable notice -- I  
21 think reasonable is usually an objective  
22 person standard, and that's what we would  
23 hope to be able to brief in the post-hearing.

24           ALJ BEMESDERFER: I take that point,  
25 and I have no doubt that counsel for DISH  
26 will have questions regarding that. But  
27 let's move on.

28           ALJ MASON: Before you do that, though,

1 I did have a point. Isn't there, though, a  
2 connection between the reasonable notice and  
3 DISH's ability to migrate its subscribers to  
4 the T-Mobile network? I mean, doesn't there  
5 have to be an connection between the two?  
6 You can't just say, "This notice is  
7 reasonable" and then DISH says, "Well, we're  
8 not done with the migration process."  
9 Doesn't there have to be some kind of a  
10 relationship between the two?

11 MR. GELFAND: Well, I think it is  
12 reasonable, all things considered. And one  
13 thing that might be considered, and honestly,  
14 probably should, is DISH's circumstance. I  
15 appreciate that, your Honor. But the showing  
16 we're making today, I hope, through Mr. Ray's  
17 testimony and through the submission we've  
18 made is this was all disclosed to the  
19 Commission in December 2019. We put in front  
20 of the Commission this provision. Mr. Ray  
21 explained in his testimony how the notice  
22 provision would work. There was no false  
23 statement about that. There was no guarantee  
24 that it would be three years no matter what.  
25 The notice provision becomes completely  
26 unnecessary if the promise was to keep it for  
27 three years. It's superfluous. And it was  
28 never intended to be superfluous.

1           And I can't speak for the Justice  
2 Department. I once could. I had the  
3 privilege of serving in that institution. I  
4 can't speak for them now obviously. But I  
5 don't think they're taking the position that  
6 reasonable notice meant keep it running for  
7 three years no matter what.

8           And the allegation against us that  
9 we're defending here today is that we somehow  
10 promised three years and that when we  
11 undertook what we view as a reasonable  
12 notice, that that somehow rendered the prior  
13 testimony and the prior presentation, which  
14 was fulsome, and it disclosed this provision,  
15 that it somehow goes back in time and renders  
16 that false.

17           And for the purpose of the OSC  
18 proceeding, your Honor, that's what we're  
19 trying to get at with Mr. Ray's testimony. I  
20 do appreciate that there are other contexts  
21 in which the reasonableness of the notice,  
22 you know, has relevance, and we're very  
23 respectful of that. This company has no  
24 interest in seeing a single person cut off  
25 from service. They've been working extremely  
26 hard to make this work. They gave it  
27 15-months notice. They've tried to  
28 facilitate it. They've worked with DISH.

1 They've got all their own customers, you  
2 know, lined up, and they are working hard on  
3 that. And so, you know, that's something for  
4 another day, though, your Honor.

5 ALJ BEMESDERFER: All right, Mr.  
6 Gelfand. At that point, would you point to  
7 the place in Mr. Ray's prior testimony where  
8 he disclosed the six months' notice provision  
9 and explained it?

10 MR. GELFAND: I will, your Honor.

11 ALJ BEMESDERFER: You don't have to do  
12 it now, but at some point, when this hearing  
13 is over, I'd like you to put that on the  
14 record.

15 MR. GELFAND: And I do, in fact, have  
16 it in my outline, your Honor. I hope it  
17 satisfies that request. Again, I'm always  
18 very grateful when a court, a judge or a  
19 Commission provides me with that kind of  
20 guidance. So as part of the post-hearing  
21 briefing, you know, we -- it may be helpful  
22 for us to have an opportunity, in addition to  
23 the example that we'll provide today, to go  
24 back and give you a complete catalog of how  
25 that disclosure was made.

26 ALJ BEMESDERFER: Thank you.

27 ALJ MASON: Before we go on, I know  
28 normally we take a little break for the court

1 reporters, but I see it's 11 minutes to  
2 12:00. Let me just ask the court reporters  
3 should we proceed with the examination and  
4 just take the lunch break at noon?

5 THE REPORTER: Yes, that's fine.

6 ALJ MASON: All right. So Mr. Gelfand,  
7 go ahead. We'll go up into the noon hour.  
8 Then we'll take our lunch break. ]

9 MR. GELFAND: Thank you, your Honor.  
10 And I do want to revise my opening statement  
11 and disclose that I have no chance of  
12 completing Mr. Ray's direct testimony before  
13 the lunch break. I apologize for that. I  
14 think it's been a good interaction, and I  
15 hope the Court and the Commissioner will give  
16 me some indulgence here because this is  
17 important stuff, so thank you.

18 Q Mr. Ray, we talked about the notice  
19 provision in Section 2.2. We want to go on  
20 now to the next sentence, which was quote:

21 As between the parties, DISH is  
22 solely responsible for the  
23 migration of legacy network  
24 subscribers to the T-Mobile  
25 network by providing customers  
26 with a VoLTE capable device --

27 Actually, I'm going to pause there  
28 for a moment. When it says, "VoLTE capable



1 device," that means voiceover LTE; is that  
2 correct?

3 A You do, Mr. Gelfand. That's a  
4 device that will work effectively on networks  
5 which use VoLTE service, which is primary  
6 delivery of voiceover as distinct from CDMA.

7 Q When you testified earlier about  
8 the two ways you can upgrade customers either  
9 on the SIM card or sometimes having to get an  
10 all-new device, is that what you're referring  
11 to, getting a VoLTE capable device?

12 A A device that would work on the  
13 T-Mobile network, VoLTE capable, and that  
14 might just require a simple SIM card change;  
15 it might require a device to be changed.

16 Q And it says:

17 As between the parties, DISH is  
18 solely responsible for the  
19 migration of legacy network  
20 subscribers to the T-Mobile  
21 network by providing customers  
22 with a VoLTE capable device and  
23 migrating them to the T-Mobile  
24 network before legacy network  
25 shutdowns in each applicable  
26 market.

27 Could you explain to the Commission  
28 what the purpose of that sentence in Section

1 2.2 was.

2 A I think it's very clear that the  
3 two parties agreed that DISH had  
4 responsibilities, T-Mobile had  
5 responsibilities to prepare the network for  
6 migration, et cetera, but DISH's  
7 responsibility was to ensure that the Boost  
8 customers had a device that was capable of  
9 migration and that had to be completed to  
10 work with their customers, needed to be  
11 completed within the notice period so that by  
12 the time that we shut down the CDMA network,  
13 the Boost customers would have a device  
14 capable of working on T-Mobile network.

15 DISH's obligation was clearly  
16 outlined here and it was agreed to by both  
17 parties and with the Department of Justice.

18 Q When the agreement referred to  
19 legacy network shutdowns here, was it  
20 referring to a shutdown after the reasonable  
21 notice of at least six months?

22 A That's correct.

23 Q And there's a final sentence of  
24 this section that says, quote:

25 For the avoidance of DOW, services  
26 will no longer be available on the  
27 legacy network following such  
28 shutdown.

1           Could you tell the Commission what  
2           the purpose of that sentence was?

3           A     Okay. The sentence here was to  
4           make it very clear that legacy network  
5           services, CDMA services, would not be  
6           available post-shutdown, at the end of the  
7           notification period -- I'm sorry -- and the  
8           shutdown.

9           Q     Okay. Do you recall -- and we'll  
10          come back to the testimony in a moment,  
11          probably after the lunch break realistically,  
12          but do you recall you submitted this  
13          agreement as part of your supplemental  
14          testimony in 2019?

15          A     Yes. It was clearly a very  
16          important part of the entire divestiture  
17          arrangement, which we came to the Commission  
18          to discuss and provide information on. I  
19          believe this was submitted as part of the  
20          written testimony.

21          Q     And having looked back at this  
22          section now, is there any doubt in your mind  
23          that it was understood by the signatories to  
24          this agreement and to the Justice Department  
25          that the timing obligations that T-Mobile had  
26          with respect to CDMA shutdown was reasonable  
27          notice of at least six months?

28          A     The documents, the extract from the

1 documents are very clear.

2 Q Is there any doubt in your mind as  
3 a result of this section that it was DISH,  
4 and DISH alone, that had the obligation to  
5 upgrade devices after receiving that notice?

6 A Absolutely. DISH owned those  
7 customers. They were no longer T-Mobile post  
8 the divestiture. Those customers are DISH's  
9 customers. It was very clear it was their  
10 responsibility to conduct the migration  
11 activities necessary that DISH agreed to and  
12 signed up to as we all made the agreement and  
13 arrangement together, and that that work  
14 would be completed in the period of notice to  
15 the shutdown.

16 Q Is there any doubt in your mind, as  
17 a result of this provision, that if DISH was  
18 on notice, that once you did the shutdown  
19 after giving reasonable notice, that they  
20 would not have a CDMA network available to  
21 them anymore.

22 A It's very clear.

23 Q Did you make any effort to conceal  
24 this construct from the Commission at the  
25 time of your prior testimony?

26 A Not at all. It was a freshly,  
27 newly minted document regarding divestiture  
28 that we provided as much information as we

1 were allowed to or could to the Commission.  
2 Specifically, these elements were clearly  
3 communicated, I believe, in written  
4 testimony.

5 MR. GELFAND: All right. Your Honor, I  
6 notice it's about three minutes of noon. I  
7 do intend now to move into prior testimony  
8 and ask Mr. Ray to explain what he said,  
9 which is in the record, but I think it will  
10 be helpful to the Commission for him to  
11 explain it, and be available to your Honors  
12 to answer any question about what he meant,  
13 but I clearly can't do that in three minutes;  
14 so would you like to take a lunch break now?

15 ALJ BEMESDERFER: Yes. Let's do that  
16 we'll take a one-hour break. We'll resume at  
17 1:00. Off the record. ]

18 (Whereupon, at the hour of 12:00, a  
19 recess was taken until 1:04)

20 \* \* \* \* \*

21  
22  
23  
24  
25  
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27  
28

AFTERNOON SESSION - 1:04 P.M.

\* \* \* \* \*

ALJ BEMESDERFER: Go ahead.

MR. GELFAND: Thank you, your Honor.

NEVILLE RAY,

resumed the stand and testified further as  
follows:

BY MR. GELFAND:

Q Mr. Ray, welcome back from lunch.

I'm going to show you testimony  
that you provided to the Commission in  
December 2019 about this MNSA that we were  
discussing earlier and the impact it would  
have on the migration.

And so we are now looking, your  
Honor, at OSC T-Mobile-03, and it's from  
Mr. Ray's supplemental testimony in December  
2019, and if you are looking at that  
testimony, it's page 19, and we'll cover  
lines 15 through 25. So supplemental  
testimony, page 19, lines 15 to 25.

Your Honor, I just want to note, do  
you want me to wait until you and your  
colleagues have located the document?

ALJ BEMESDERFER: I'm looking at it  
right now.

ALJ MASON: And I have it too.

MR. GELFAND: Thank you, your Honors.

1           Q     So you were asked the question:  
2     How will migration of Sprint prepaid  
3     customers be handled after the divestiture?  
4     I would like to ask you to read your answer  
5     and since it is in writing, maybe you can  
6     read it a little quickly, and we'll make sure  
7     the court reporter gets it for accuracy, but  
8     I've got a couple of questions to ask you  
9     about the answer you gave, and so please read  
10    your answer, and I'll stop you when I have a  
11    question.

12           A     Sure.

13                   My rebuttal testimony regarding  
14                   the migration of Sprint's prepaid  
15                   customer base provided that they  
16                   would be migrated in exactly the  
17                   same fashion and on the same time  
18                   frame as Sprint postpaid  
19                   customers. At that time the DOJ  
20                   commitments did not exist. In  
21                   light of those commitments, I can  
22                   no longer offer testimony as to  
23                   how DISH will address  
24                   post-divestiture migration of  
25                   legacy Sprint prepaid, excluding  
26                   Assurance customers, to the new  
27                   T-Mobile.

28           Q     Let me stop you there. When you

1 referred to "Sprint prepaid excluding  
2 Assurance customers" in that sentence, that's  
3 the Boost customers that were Sprint's  
4 prepaid customers?

5 A The Boost customers; correct.

6 Q That's what you were referring to?

7 A Correct.

8 Q Continue your answer, please.

9 A DISH will be responsible for its  
10 customers' handset upgrade and  
11 compatibility after the  
12 divestiture. I would note,  
13 however, that we are obligated to  
14 cooperate in good faith with DISH  
15 with respect to the migration of  
16 those subscribers to the new  
17 T-Mobile network. We are also  
18 required to provide DISH with at  
19 least six months' advance notice  
20 before we shut down the legacy  
21 network.

22 Q Okay. That's what I wanted to ask  
23 you about. Could you explain to the judges  
24 what you meant by that answer, but before you  
25 do that, Mr. Ray --

26 Your Honor, a couple of my  
27 questions will be about just part of an  
28 answer. I'm doing that to move things along.



1 If, in the interest of completeness, the  
2 Court would prefer the entire answer to be  
3 read into the record, we're, obviously, happy  
4 to do that, but we're trying to move it  
5 along.

6 ALJ BEMESDERFER: I appreciate that.

7 ALJ MASON: Focus on the portions you  
8 want to ask questions about.

9 MR. GELFAND: Thank you.

10 Q If you could tell the Commission  
11 what you meant by that portion of your answer  
12 that you just read.

13 A The full piece, Mr. Gelfand?

14 Q Yes, please.

15 A Yeah. Providing the answer or the  
16 information that post the divestiture, the  
17 responsibility for migration of the Boost  
18 customers was now DISH's responsibility.  
19 That was not the case in February when we  
20 first appeared in front of the Commission in  
21 the hearing, but when we came to December, it  
22 was now clear that DISH had a responsibility  
23 to migrate the legacy-Sprint prepaid, namely  
24 the Boost customers.

25 And that they would be responsible  
26 for providing handset compatibility, be that  
27 the SIM change or the device change, whatever  
28 was required, so that the customers could be

1 migrated effectively. And that the  
2 responsibility for that migration was clearly  
3 now in the hands of DISH and not T-Mobile.

4 Q Did you also include in this answer  
5 a reference to what the notice obligation was  
6 from the MNSA?

7 A I did. It states that we are  
8 required, T-Mobile is and was required, to  
9 provide DISH with at least six months' notice  
10 before we shut down the legacy network.

11 Q And we already established this,  
12 but just to tie it together, the actual MNSA  
13 language we looked at before lunch that was  
14 submitted with your supplemental testimony;  
15 is that correct?

16 A Correct.

17 Q So is this answer trying to explain  
18 what was in that document and how that  
19 obligation worked?

20 A Absolutely. This was an  
21 explanation of cross-section we looked at on  
22 the MNSA.

23 MR. GELFAND: All right. Thank you.

24 Your Honor, I'm now going to use the  
25 rest of the examination time to actually go  
26 through each of the five assertions on page 8  
27 of the OSC.

28 Q And, Mr. Ray, I think we have the

1 ability to show you page 8 so you can read  
2 along with me, but the first statement  
3 alleged on page 8 of the OSC is that T-Mobile  
4 supposedly said to the Commission, quote:

5 This CDMA network would be  
6 available to its Boost customers  
7 until they were migrated to DISH's  
8 LTE or 5G services.

9 Do you see that in the OSC?

10 A I do.

11 Q Do you believe that you said that  
12 to the Commission?

13 A No. Absolutely not.

14 Q Can you explain why you don't think  
15 you said that to the Commission?

16 A We would never have made a  
17 statement that left us responsible for  
18 managing and maintaining a CDMA network until  
19 such point in time that DISH had built their  
20 network. There was no indication or  
21 knowledge from T-Mobile as to when or how  
22 that would happen. There are many reasons  
23 why that information would not be provided to  
24 me specifically.

25 So did we have any knowledge as to  
26 when DISH was going to build-out its network,  
27 LTE or 5G? No. And so we would have never  
28 tied a CDMA timeline, a CDMA shutdown time

1 line, to a date in the future that was  
2 impossible for us to predict or project.

3 Q Okay. Now, the OSC refers to a  
4 statement that said: The company would keep  
5 CDMA until DISH migrated to DISH's LTE or 5G  
6 services.

7 I want to ask you about what you  
8 did say about maintaining the CDMA network,  
9 and this is going to involve another question  
10 that you got in your supplemental testimony  
11 that refers back to earlier testimony about  
12 CDMA.

13 So here, your Honors, I'm looking  
14 at OSC T-Mobile-04, which is Mr. Ray's  
15 supplemental testimony, and we're going to be  
16 looking at page 20, line 22, to page 21, line  
17 6, and this is from December 2019. And,  
18 again, to move things along, I'll read the  
19 question and ask Mr. Ray to comment on the  
20 answer he gave.

21 The question you had in your  
22 supplemental testimony, Mr. Ray, was:

23 You also stated in your prior  
24 testimony that, quote, 'T-Mobile  
25 will not terminate the CDMA  
26 network in any market without  
27 migrating users from the network  
28 first.'

1           So, in other words, you had  
2 previously said you would maintain CDMA until  
3 you migrated your customers.

4           And then you were asked:

5           How do the FCC and DOJ commitments  
6 impact that testimony?

7           And, please, read for the Commission  
8 how you responded to that starting with your  
9 answer and going to the following page on  
10 line 6.

11          A    These commitments did not exist at  
12               the time I provided that testimony  
13               and thus my prior testimony did  
14               not account for the divestiture of  
15               the Sprint prepaid business. In  
16               light of these commitments, my  
17               prior testimony would now have to  
18               be modified to include only Sprint  
19               CDMA customers who are not  
20               divested.

21               As I noted above, the migration  
22               of Sprint's prepaid customers, not  
23               including Assurance Wireless, will  
24               be DISH's responsibility although  
25               T-Mobile has a number of  
26               obligations to facilitate that  
27               process as I described above.

28               Additionally, I suspect that

1 DISH will have every incentive to  
2 complete the migration before the  
3 CDMA network is terminated in  
4 order to continue to provide the  
5 divested Sprint prepaid customers  
6 with service under the MVNO  
7 arrangement.

8 Q Okay. That's good. Could you  
9 explain to the Commission what you intended  
10 and did, in fact, convey through that answer.

11 A Well, again, we have to modify our  
12 testimony from February where the divestiture  
13 was not contemplated to the hearing in front  
14 of the Commission in December. At that point  
15 in time, it was clear that DISH had the  
16 responsibility and obligation to migrate  
17 their customers, Boost customers, and  
18 T-Mobile could no longer commit that we would  
19 migrate the customers, the Boost customers,  
20 within the time frame. That was now DISH's  
21 obligation and responsibility.

22 Q If you go up to the second  
23 sentence, the second sentence says:

24 In light of these commitments, my  
25 prior testimony would now have to  
26 be modified to include only  
27 Sprint-CDMA customers who are not  
28 divested.

1 Do you see that?

2 A I do.

3 Q Were you referring there to the  
4 Sprint customers you retained?

5 A That's correct.

6 Q So they were not divested.

7 You were excluding from the earlier  
8 testimony the Boost customers; correct?

9 A That's right.

10 Q So in the earlier testimony from  
11 February where you had said, we won't -- we  
12 will maintain CDMA until we migrate  
13 customers, were you limiting that prior  
14 answer to just the nondivested customers?

15 A Correct. Our responsibility was to  
16 manage the migration for the nondivested  
17 customers. Boost's responsibility was to  
18 manage the migration for the divested  
19 customers.

20 Q Do you recall, when you provided  
21 this testimony and appeared live at a  
22 hearing, did anybody press you on this issue?

23 Were you asked by DISH employers or  
24 anyone else: Just to be clear, Mr. Ray,  
25 you're going to still preserve the CDMA  
26 network as long as you need; aren't you?

27 Did you ever get a question like  
28 that?

1           A    No, not at all.

2           Q    Okay. In light of that, do you  
3 believe that you conveyed to this Commission  
4 or anyone at T-Mobile had conveyed to this  
5 Commission what is alleged in Point No. 1 on  
6 page 8 of the OSC, which is that you would  
7 maintain CDMA until all customers were  
8 migrated to DISH's LTE or 5G services?

9           A    No. There's no basis for the  
10 statement.

11          Q    Okay. Let's move to allegation or  
12 assertion No. 2 on page 8 of the OSC. Again,  
13 we're going to show Mr. Ray that so he has it  
14 in front of him while I read it. The second  
15 statement alleged on page 8 of the OSC is  
16 that T-Mobile supposedly said to the  
17 Commission, quote:

18                   Maintaining service to the CDMA  
19                   network is not required use of  
20                   Sprint's PCS Spectrum.

21                   Do you believe you said that to the  
22 Commission?

23          A    No.

24          Q    If we look at just one other  
25 reference point, on page 3 of the OSC at the  
26 bottom of the page, it says, quote:

27                   Nor did T-Mobile ever reveal that  
28                   PCS spectrum was used to provide



1 CDMA service to Boost customers.

2 Do you see that?

3 A Yes.

4 Q Is that true?

5 A No. That statement is incorrect.

6 Q And why do you say that's  
7 incorrect?

8 (Reporter clarification.)

9 BY MR. GELFAND:

10 Q You said it was incorrect in the  
11 allegation in the OSC, No. 2. Why do you say  
12 that?

13 A Because PCS spectrum was being used  
14 to provide CDMA service.

15 Q Did you disclose that to the  
16 Commission during the prior proceeding?

17 A We did.

18 Q I'm going to show you a couple of  
19 examples, but before we do that just to make  
20 sure we are all speaking the same language,  
21 what is PCS Spectrum?

22 A So the acronym stands for Personal  
23 Communication Services. It's a spectrum band  
24 that was auctioned in the U.S. in the  
25 mid-'90s and it's a spectrum that is banded  
26 in the 1900 MHz range. Sometimes it's called  
27 PCS; sometimes it's called 1900 MHz; it may  
28 be referenced as 1.9 GHz spectrum, too.

1           MR. GELFAND: Your Honor, I'm now going  
2 to show a document and this is an exhibit --  
3 well, first of all, it's OSC T-Mobile-05 in  
4 the collection of exhibits for this hearing,  
5 and this is a page from a large spreadsheet  
6 that was included as Attachment E to  
7 Mr. Ray's supplemental testimony back in  
8 December of 2019, and it was a confidential  
9 document. Some of it is still confidential,  
10 and we have redacted those portions that are  
11 still confidential, but those are not needed  
12 in order to ask the questions I have to ask.

13                 So this is one page of a lengthy  
14 document that was previously put into the  
15 Commission's records.

16           Q     And I would like to ask Mr. Ray:  
17 Please explain to the Commission what this  
18 document is.

19           A     Well, we have an extract here of a  
20 very large document that provides details and  
21 information on the Sprint cell sites in  
22 California. So each row in this table --  
23 there are several thousand rows; obviously,  
24 we have a small number in front of us here --  
25 denotes site-specific information of the  
26 network.

27                 If I can draw your attention,  
28 there's a number of columns -- there's a set

1 of columns in the -- kind of the middle of  
2 the page that are purple in color, and there  
3 one of the column headers states: "Current  
4 equipment, 1900 3G."

5 And if you see a positive number  
6 there, the number one, the binary field, 01,  
7 does it have 1900 MHz equipment deployed on  
8 that site. One is placed in the field and  
9 that denotes, yes, 1900 equipment exists.

10 If you move further to the right in  
11 kind of the brown-orange color, you can see  
12 the second one in, it says: "Radio config  
13 1900 3G."

14 Again, that denotes the radio  
15 configuration for the 1900 MHz equipment that  
16 was identified in the prior columns, and  
17 there you see an abbreviation that notices or  
18 provides information on the configuration of  
19 the radio for that site.

20 And then if you move to the right,  
21 the next set of columns, which are not  
22 colored unfortunately, but there is one there  
23 that is very important. It says: "1900 CDMA  
24 carriers on air."

25 It's the middle of those next three  
26 columns, and that data set, that denotes if  
27 spectrum is being used on the 1900 MHz band,  
28 and you can see there, the carriers, that's

1 the number of wildland carriers being used  
2 for PCS 1900 MHz services, and that field is  
3 a positive number, which denotes Spectrum in  
4 the 1900 MHz band is in use on that cell  
5 site.

6 Q Thank you.

7 Just to remind the Commission, 1900  
8 is the PCS; correct?

9 A Correct. 1900, 1.9 GHz, PCS are  
10 all synonymous terms in the industry for the  
11 spectrum band that's been with us for many  
12 decades.

13 Q And the last column that you had  
14 mentioned said specifically "CDMA," but you  
15 had mentioned a couple other columns that  
16 said 1900 3G. Is 3G equivalent to CDMA there  
17 as well?

18 A Yes, that's correct.

19 Q And was this a list of Sprint  
20 towers?

21 A Sprint cell sites.

22 Q Sprint cell sites.

23 And when you put this document into  
24 the record, this was all of the Sprint cell  
25 sites in California; do I have that right? ]

26 A I believe so, yes.

27 Q Do you have a recollection of,  
28 generally speaking, how many that was?

1           A     Between 4- and 5,000, I --  
2     somewhere in that range. Around 5,000, I  
3     think.

4           Q     And so if you read down the three  
5     columns that have 1900, including the one  
6     that specifically says, "CDMA," am I correct  
7     that that's identifying for the Commission  
8     each California Sprint cell site that is  
9     using PCS for CDMA?

10          A     Yes. That is correct.

11          Q     And do you have a recollection --  
12     obviously, we're not going to go through the  
13     whole spreadsheet, but -- well, let me ask it  
14     this way:

15                 Have you had a chance to go back  
16     and refresh any recollection about how  
17     voluminous this spreadsheet was before this  
18     testimony?

19          A     It's a very large spreadsheet.  
20     I've seen the pages printed off. It's a big  
21     attachment.

22          Q     And do you have an estimate of how  
23     many cell sites are shown on that spreadsheet  
24     that were using PCS or CDMA?

25          A     Thousands, I believe.

26          Q     And I think I said this, but let's  
27     just make sure you agree with it, do you  
28     recall that you submitted this document to

1 the Commission, along with your supplemental  
2 testimony?

3 A Yes.

4 Q Were you trying to hide the fact  
5 that PCS was being used for CDMA?

6 A Not at all. The reverse is true.

7 Q Okay. I'm going to go to another  
8 document that was in the record of this case  
9 on this particular topic.

10 I've just got one more, your Honor.  
11 I'm trying to do this by way of example.

12 We're going to look at OSC  
13 T-Mobile-06. And this is a different  
14 witness's submission to the Commission. And  
15 it was back in February. But it's in the  
16 record, and -- so we might as well use Mr.  
17 Ray to explain what it means so there's no  
18 question that this issue was disclosed to the  
19 Commission.

20 So, Mr. Ray, I'm showing you a  
21 declaration by John Saw that was submitted to  
22 the Commission in February of 2019, with  
23 testimony by Mike Sievert. And let me ask a  
24 couple questions about this.

25 First of all, who is John Saw?

26 What was John Saw's position at the  
27 time this declaration was submitted?

28 A I believe he was the Chief

1 Technology Officer for Sprint.

2 Q And he's with T-Mobile today?

3 A Yes. He's on my team.

4 Q All right. So he stayed with the  
5 company after the merge?

6 A He did.

7 Q At the time of the declaration, he  
8 was the Chief Technology Officer of Sprint.

9 Fair to say that he would have had  
10 knowledge about what types of spectrum were  
11 being used for which types of technology on  
12 the Sprint network?

13 A Yes, very detailed knowledge, I  
14 would assume.

15 Q And it's a matter of record in this  
16 case, but this was attached as Attachment A  
17 to Mike Sievert's testimony in February of  
18 2019.

19 Who is Mr. Sievert?

20 A He is the CEO of T-Mobile.

21 Q And what was his role in February  
22 of 2019?

23 A I believe he was the COO.

24 Q So he was a Senior Executive of  
25 T-Mobile in February of 2019?

26 A Yes.

27 Q And I would like -- and he  
28 submitted this with his testimony.

1 I would like you to look at  
2 paragraph 7 of Mr. Saw's declaration. And I  
3 would like you start about 8 or 9 lines down.  
4 We're just going to read one sentence. It's  
5 the one that reads, "Until VoLTE is  
6 deployed."

7 Do you see that about 8 or 9 lines  
8 down on paragraph 7?

9 A I do.

10 Q And could you read that for the  
11 Commission, please?

12 A (Reading from document):

13 Until VoLTE is deployed, voice  
14 traffic will continue to be served  
15 on our 3G CDMA network in the 800  
16 megahertz and 1.9 gigahertz band.

17 Q And so he was referring to "Our 3G  
18 CDMA network," he was referring to Sprint's;  
19 correct?

20 A Sprint's, yes.

21 Q And he said it was going to be  
22 deployed using 1.9 gigahertz; correct?

23 A Correct.

24 Q And you already established that's  
25 the same as PCS; correct?

26 A Correct.

27 Q Do you have any doubt in your mind,  
28 Mr. Ray, that T-Mobile disclosed to the



1 Commission at the time of the merger  
2 proceedings that PCS spectrum was being used,  
3 in fact, for CDMA and the Sprint network?

4 A No. It was disclosed in multiple  
5 places, as we've just described.

6 Q Okay.

7 Your Honor, if we had not gone into  
8 a confidential session earlier, if we had a  
9 perfect ordering here, this is where we would  
10 have presented the spectrum chart. And Mr.  
11 Ray would have testified why that was not  
12 making a representation about current  
13 deployment, that it was a future plan. And  
14 we would have done that in testimony here.  
15 But we've already done it; and I'm not going  
16 to double back to it, obviously.

17 ALJ BEMESDERFER: I understand that.  
18 And thank you.

19 MR. GELFAND: Okay. Thank you.

20 Q Mr. Ray, we're going to move to  
21 allegation number three in the OSC now. And  
22 that's on page 8. And we're going to put  
23 that in front of you so you can read along  
24 with me.

25 And assertion number three, or  
26 allegation number three, in the OSC says that  
27 T-Mobile supposedly said, quote:

28 PCS spectrum would not be used for

1 T-Mobile's 5G build-out, end  
2 quote.

3 Do you believe you said that to the  
4 Commission?

5 A No. The reverse is true. We've  
6 provided evidence in verbal and written  
7 testimony, I believe multiple times, talking  
8 and demonstrating that PCS spectrum would be  
9 used for 5G. It was a critical element of  
10 the 5G rollout for the new company.

11 Q Let's look at a couple examples of  
12 that.

13 So we're going to begin with OSC  
14 T-Mobile Exhibit 7. And this is a copy of  
15 your supplemental testimony from  
16 December 2019. And we're going to look at  
17 page 10, lines 17 to 19. And you were asked  
18 at that time:

19 Can you point to where in your  
20 rebuttal testimony it describes  
21 exactly what type of spectrum New  
22 T-Mobile will use for 5G?

23 Just read the first three lines of  
24 that, 17 to 19 please.

25 A Yes.

26 The spectrum refarming table from  
27 my rebuttal testimony, copied  
28 below, shows that New T-Mobile

1           will deploy 5G using the following  
2           five types of spectrum:  
3           600 megahertz, PCS, AWS, 2.5  
4           gigahertz and millimeter wave, but  
5           not 800-megahertz spectrum.

6           Q    And in that list, where you listed  
7 types of spectrum that would be deployed by  
8 T-Mobile for 5G, was PCS on that list?

9           A    Yes. It's under italics "two."

10          Q    And you're referring here to the  
11 spectrum refarming table.

12                Is that the same chart that I  
13 referred to as "the spectrum chart" earlier  
14 on, that we looked at a redacted version of  
15 in the closed session?

16          A    Yes. That is correct.

17          Q    And I should have done this -- I  
18 apologize to the Commission. But the  
19 Commissioners can go back and the judges can  
20 go back and look at it.

21                As you recall, did that spectrum  
22 refarming table, that spectrum chart, reveal  
23 a plan by T-Mobile to use PCS or 5G?

24          A    Yes. It does in many places.

25          Q    And we're going to do one more  
26 example of this. We're going to look at OSC  
27 T-Mobile-08. And this was slide 18 of an  
28 Attachment C that you included with your

1 rebuttal testimony back in February of 2019.  
2 So this is back in 2019, when you were simply  
3 talking about the plans for the merge entity.

4 Just by way of background, do you  
5 remember what this slide deck was?

6 I'm not going to put the whole  
7 thing up. It's got a lot of confidential and  
8 sensitive data in it.

9 But do you recall, generally, what  
10 the slide deck was?

11 A Yes. The slide deck outlined our  
12 network model and plan for combining the  
13 assets between T-Mobile and Sprint and  
14 building out our 5G network.

15 Q And is there somewhere on this --  
16 and this is slide 18 of that deck?

17 A Yes.

18 Q Before we got here today, did you  
19 have a chance to go back and just check that  
20 to make sure this was an accurate copy of  
21 slide 18 from that deck?

22 A I did.

23 Q And it is accurate?

24 A It is accurate. Yes.

25 Q And does -- can you tell the  
26 Commission if there's a way to look on here  
27 somewhere and see that PCS, indeed Sprint's  
28 PCS spectrum, would be used in the combined

1 network for 5G?

2 A Yes. If you look at the top set of  
3 data on the chart, there is a magenta block  
4 with 5G stated on top of it. To the right of  
5 that are several spectrum types that we  
6 planned -- have planned to use, that are  
7 using, for the 5G services. And the list  
8 reads:

9 Millimeter wave, Sprint 2.5  
10 gigahertz, Sprint PCS, T-Mobile  
11 mid and T- -- mid and low band.

12 Q So when it lists "Sprint PCS" there  
13 next to 5G, what did that convey that?

14 A That Sprint PCS spectrum would be  
15 utilized for 5G services.

16 Q In light of what we just looked at,  
17 both on this Question 2 and Question 3 from  
18 the OSC, both of which allege that T-Mobile  
19 misrepresented something about PCS: One,  
20 that PCS was not used for CDMA; and the other  
21 that it was not used for 5G or would not be  
22 used for 5G.

23 Do you think either of those has  
24 any merit, whatsoever, in light of what we  
25 just looked at?

26 A No, not at all.

27 Q Was there any effort by T-Mobile to  
28 hide the fact that PCS was both currently

1 used by Sprint for CDMA at the time, and that  
2 it would be used for 5G in the combined  
3 network?

4 A No. We absolutely disclosed that  
5 information.

6 Q All right.

7 I'm going to go to the fourth  
8 assertion in the OSC now.

9 ALJ MASON: Excuse me, Mr. Gelfand.

10 Before you do that, that slide 18  
11 you were just referring to, that is the same  
12 slide that's attached in this confidential  
13 version of the T-Mobile response in the Order  
14 to Show Cause; is that correct?

15 MR. GELFAND: I believe so. And I'm  
16 looking at Ms. Toller to verify.

17 MS. TOLLER: Yes, it is, ALJ Mason.  
18 And although the entirety of that  
19 presentation is confidential, upon further  
20 review, we decided that slide 18 was not  
21 confidential, which is why we made it  
22 unconfidential for today's hearing.

23 (Crosstalk.)

24 ALJ MASON: All right. Thank you.

25 MR. GELFAND: I just would like to  
26 commend Ms. Toller. She really worked hard  
27 to make this presentation presentable in  
28 public. So in some instances, we took

1 snippets of something or a document or page  
2 of something and made that accessible for the  
3 public discussion.

4 Q Okay. Now we're going to go to the  
5 fourth assertion in the OSC. And that's on  
6 page 8. And the OSC alleges that Sprint --  
7 I'm sorry -- that T-Mobile supposedly said,  
8 quote:

9 All former customers would have a  
10 seamless, undegraded experience  
11 during the migration period 2020  
12 to 2023.

13 Do you see that assertion?

14 A Yes, I do.

15 Q And do you think you or anybody  
16 else from T-Mobile said that to the  
17 Commission?

18 A No.

19 Q All right.

20 I'm going to show you a piece of  
21 testimony now that we need to talk about.  
22 Because it's cited -- it's been cited by DISH  
23 in different context, I believe, been cited  
24 in the OSC. And I want you to explain it.  
25 And we're going to work through it, because  
26 it's being used to say that you made this  
27 statement.

28 So we're going to look at your

1 prior testimony. And it's going to be OSC  
2 T-Mobile-09. And this is from the hearing  
3 transcript of December 2019, when you were  
4 testifying. And we're going to look at  
5 page 1382, line 11, going over to 1383,  
6 line 14.

7 And I'm going to begin by reading  
8 the question, and then ask you to read your  
9 answer out loud. And we're going to have a  
10 few questions about that. So the question  
11 there was:

12 Okay. The New T-Mobile will need  
13 the cell towers for at least a few  
14 years to ensure that former Sprint  
15 customers continue to have  
16 service, while T-Mobile -- while  
17 the New T-Mobile conducts the  
18 transmission; correct?

19 I believe -- I don't know. I  
20 believe that it was probably "transition" not  
21 "transmission." I just offer that if it's  
22 helpful.

23 And then it says:

24 It will take a couple of years.

25 And could you please read your  
26 answer going down to line 11 of page 1382?

27 A (Reading from document.)

28 Absolutely. That's why we've



1           always said it's a three-year  
2           integration program. You know,  
3           sites will start to free up and  
4           start -- the decommissioning  
5           process will start within the  
6           three years. But the line share  
7           of the activity would be once  
8           we've successfully migrated  
9           customers. Obviously, the intent  
10          there is to make sure that no  
11          Sprint customer during that  
12          migration process, be they a Boost  
13          customer or a Sprint customer, or  
14          however they are strayed --

15                I believe there, Mr. Gelfand, my  
16          testimony was probably "striped," referring  
17          to the branding --

18                Suffers anything approaching a  
19          degraded experience. And we've  
20          gone through our plan, in terms of  
21          mitigation, what we are going to  
22          do site by site, in incredible  
23          detail, with the Federal agencies.  
24          This was something that we're very  
25          focused on, ensuring that we  
26          didn't damage or impact the Sprint  
27          customer-base experience during  
28          the migration phase. We have been

1           very careful and deliberate about  
2           ensuring that sufficient time  
3           under the network is fully ready  
4           for the migration and that we can  
5           support the best experience for  
6           those customers under T-Mobile.

7           Q     Okay. One -- I think you misread  
8 one word. Just for the court reporter's  
9 benefit, there's a sentence that begins "And  
10 we've gone through our plans in terms of  
11 migration." I think you accidentally said  
12 "mitigation," but --

13          A     Okay. I'm sorry.

14          Q     That's okay. I think the record  
15 will be clear enough on that. Okay. So we  
16 need to talk about this for a couple of  
17 minutes.

18                 Could you explain to the Commission  
19 what you intended by this answer, just at a  
20 general level, and then we'll try to ask you  
21 some questions about specific plans?

22          A     Well, I was -- to begin with, I was  
23 outlining, you know, this is a three-year  
24 integration program. And, by that, the  
25 discussion at the beginning here was about  
26 towers and when they would be made available  
27 and when we would decommission them. And so  
28 the three-year integration program commences

1 with the work that T-Mobile needs to do to  
2 prepare its network. So that's the first  
3 phase, Step 1.

4 Step 2 is the migration of the  
5 customers. And in this case, Boost customers  
6 and/or T-Mobile (inaudible) CDMA customers,  
7 the migration of those customers onto the  
8 T-Mobile network.

9 And then the third phase is the  
10 final decommissioning of cell sites and  
11 towers so that the integration work can be  
12 completed. And all of those steps were  
13 planned to be undertaken within the  
14 three-year timeframe.

15 And the decommissioning of towers,  
16 which was what was being questioned here, can  
17 be a lengthy process. We have to often go  
18 back and renegotiate with landlords and  
19 remove equipment and reinstate facilities, et  
20 cetera. So there are three phases. And I  
21 was outlining that the integration program  
22 would cover, kind of, a three-year period at  
23 the outset.

24 Q So when you were talking about a  
25 three-year integration program, was that  
26 referring to a fixed time of three years  
27 before the CDMA network would be shut down?

28 A No. It was up to a three-year

1 period -- up to a three-year period, wherein  
2 we would complete all of the necessary  
3 activity to combine these two networks  
4 together along with the customer bases.

5 Q And if you go to the next sentence  
6 where you said, "The line share of the  
7 activity would be once we successfully  
8 migrated the customers."

9 Do you see that?

10 A I do.

11 Q And just explain what that means,  
12 "The line share of the activity after the  
13 migration."

14 A This was, again, back on the topic  
15 of decommissioning. So, removal of T-Mobile  
16 and/or Sprint equipment from sites that were  
17 no longer required as part of the network.  
18 And my answer and my response here was to  
19 explain that that work -- much of that work,  
20 the line share, would occur post migration of  
21 the customers. So once the customers have  
22 been migrated, then we're in a position to  
23 complete and fully complete the  
24 decommissioning of cell sites and towers.

25 Q And when you're talking about the  
26 line share of the work, were you referring to  
27 work that would take place within the  
28 three-year integration program?

1           A     Yes.

2           Q     So -- so you have to do the line  
3 share of the decommissioning after the  
4 migration, but still within the three years;  
5 correct?

6           A     Correct.

7           Q     Does that suggest that the  
8 migration would be completed well before the  
9 three years?

10          A     Yes. It would be completed within  
11 the period and providing sufficient time for  
12 us to manage through the decommissioning of  
13 cell sites that weren't required.

14          Q     And when you say, "The intent there  
15 is to make sure that no Sprint customer  
16 during that mitigation" -- I did it --  
17 "During that migration process, be they a  
18 Boost customer or a Sprint customer, or  
19 however they are" -- I think you meant  
20 "striped" -- "suffers anything approaching a  
21 degraded experience..."

22                    Tell the Commission what the intent  
23 was. What was intended to protect all of  
24 these customers?

25                   How -- just reiterate or summarize  
26 again how this system works?

27          A     Well, the customers have to be  
28 migrated from these legacy technologies onto

1 LTE and/or 5G. That migration activity  
2 requires some changes and some change-outs,  
3 whatever the applicable action may be. And  
4 it was Boost's responsibility to migrate  
5 their customers and T-Mobile's responsibility  
6 to migrate their customers. The migration  
7 responsibility within this period was fully  
8 with the respective parties, DISH for Boost  
9 and T-Mobile for Sprint, prospect.

10 Q And so if those things worked  
11 according to plan, according to the contract,  
12 and you migrated your cus- -- well, first,  
13 you had to do the network. And then you  
14 migrated their customers. And DISH migrated  
15 their customers within the three-year period.

16 Was that plan intended and designed  
17 to make sure that all those customers got  
18 migrated just fine before the shutdown within  
19 the three years?

20 A That was clearly the intent, yes.

21 Q And was that truthful testimony, in  
22 your view?

23 A Absolutely.

24 Q Do you think there's anything in  
25 that testimony that can be fairly read as  
26 suggesting that you were making some kind of  
27 commitment that DISH could take as -- however  
28 long they wanted to take, and you would make

1 sure you keep the CDMA network up that entire  
2 time so their customers would be migrated  
3 after DISH decided it was time for them to be  
4 migrated?

5 A No. We never said that.

6 Q All right.

7 Do you think you said anywhere else  
8 in the record of this case that you were  
9 going to give DISH as much time as they  
10 wanted, and that you would make sure the CDMA  
11 network remained on until they decided they  
12 had enough time?

13 A Absolutely not.

14 Q Okay. I'm going to go now to the  
15 fifth allegation in the OSC -- the fifth  
16 assertion. And we're going to put that back  
17 up for you.

18 And that one says, Number 5, on  
19 page 8 of the OSC alleges that T-Mobile  
20 supposedly said:

21 DISH would have up to three years  
22 in which to complete Boost  
23 customer migration.

24 Do you believe you said that to the  
25 Commission?

26 A Nope. We did not.

27 Q We talked about some of the other  
28 evidence that bears on that. I'm not going

1 to double back to that.

2 But I just want to ask you if you  
3 think T-Mobile ever committed to maintaining  
4 CDMA for three years, no matter what?

5 A No, we did not.

6 Q Do you recall ever being asked  
7 directly whether you would give DISH three  
8 years to complete the migration, no matter  
9 what?

10 A Nope.

11 Q And we talked about the MNSA  
12 earlier on in this testimony and how that  
13 provided timing of 6-months' notice at  
14 least -- reasonable, but at least 6 months.

15 In the course of the negotiations  
16 over that MNSA, and in all your discussions  
17 with DISH and the Justice Department, do you  
18 recall ever being asked to commit to keep the  
19 Sprint network, the CDMA network, up and  
20 running for three years, no matter what?

21 A Never. No.

22 Q Do you recall ever being asked that  
23 question during the Commission proceedings?

24 A No.

25 Q Do you think that you indicated to  
26 the Commission that, in fact, you and  
27 T-Mobile intended to try to move the  
28 migration quicker than the three years?



1           A     We absolutely said that we would  
2 get this work done within the three-year  
3 period.

4           Q     All right. We're going to look at  
5 a couple examples of that. So let's look at  
6 OSC T-Mobile-10 Exhibit (sic). And this was  
7 Mr. Ray's Supplemental Testimony, at page 13,  
8 lines 11 to 18. This is from December 2019,  
9 testimony provided to the Commission.

10                     And I'm going to read the  
11 question. And it begins on line 11. And the  
12 question was:

13                     The refarming chart seems to show  
14                     that New T-Mobile will need the  
15                     800 megahertz spectrum to continue  
16                     to support CDMA and LTE service.  
17                     How will you provide that service  
18                     in light of the divestiture of the  
19                     800 megahertz spectrum?

20                     So the question was about 800. But  
21 the answer has some relevance to what we're  
22 talking about right now.

23                     Can you read your answer through  
24 line 18, please?

25           A     Yes, I will.

26                     The divestiture commitments give  
27 us three years of continued use of  
28 the 800 megahertz spectrum for the

1           time we divest Sprint's pre-paid  
2           assets to DISH -- sorry -- from  
3           the time we divest Sprint's  
4           pre-paid assets to DISH. New  
5           T-Mobile planned and still does  
6           plan to use that spectrum  
7           exclusively to support former  
8           Sprint customers during the  
9           anticipated three-year migration  
10          period and to complete the  
11          migration of Sprint customers  
12          before this deadline.

13           Q    All right. Let me stop you there.  
14                What did you mean by "And to  
15          complete the migration of Sprint customers  
16          before the deadline"?

17           A    Clearly, our plan and intent was to  
18          make sure that all of the Sprint customers --  
19          the Boost customers and Sprint prospect  
20          customers using the CDMA were off of the  
21          network and off of the 800 megahertz  
22          spectrum.

23           Q    So when you said you would use  
24          800 megahertz spectrum to support the Sprint  
25          customers during the anticipated three-year  
26          migration period, did you mean to suggest  
27          that it would take the full three years, no  
28          matter what?

1           A    No.  It's very clear that our  
2   intent and plan was to complete this  
3   migration before the three-year deadline.

4           Q    So the three years was a deadline?

5           A    The whole construct here was that  
6   we would have the spectrum available for up  
7   to three years to support this migration  
8   activity.  We never committed or stated that  
9   we would migrate the customers over a full  
10  three-year period.  It would have been  
11  foolish to do so.

12          Q    All right.

13                Let's look at another example, if  
14  we could.  We're going to go to OSC  
15  T-Mobile-11.  And this was from the hearing  
16  in December of 2019.  This was Mr. Ray's  
17  testimony.  And it starts on page 1374 at  
18  line 23, and goes a full page over to 1375,  
19  line 23.

20                And the question that you got at  
21  that time, Mr. Ray, was the following:

22                   Thank you.  And the New T-Mobile  
23                   plan is to use the 800 spectrum to  
24                   support the legacy Sprint  
25                   customers during the transition;  
26                   correct?

27                Do you see you got that question?

28          A    I do.

1           Q    Okay. I'm going to ask you to read  
2 your answer down to line 23 on page 1375.

3           A    (Reading from document.)

4                   We would use the 800 megahertz.  
5                   Why we want to use it for that  
6                   three years is, during the  
7                   migration process of Sprint and  
8                   Boost's customers off of the  
9                   legacy Sprint network and the  
10                  Sprint services and onto the New  
11                  T-Mobile network. So our intent  
12                  is to -- that's why we put three  
13                  years there. If we determine we  
14                  need longer, we have the right.  
15                  We negotiated that through the PFJ  
16                  with the Department of Justice and  
17                  with DISH so that we could retain  
18                  a portion of that 800 megahertz  
19                  spectrum for up to five years.  
20                  And the spectrum is used today. I  
21                  mean, why that last 4 megahertz is  
22                  important, that's the service of  
23                  the spectrum that supports,  
24                  primarily today, that CDMA voice  
25                  service. And that's the piece  
26                  that we want to make sure is  
27                  protected, its needs, as we move  
28                  through the first-year period --

1           the first three-year period -- I'm  
2           sorry.

3           That said, we are very, very  
4           confident that we will be at a  
5           complete migration of customers  
6           onto the New T-Mobile network  
7           within that three-year period.

8           And we have, you know, a strong  
9           history of that type of work.

10          Q     Okay. So the first part of that  
11     answer where you're discussing the fact that  
12     T-Mobile had up to three years, if it needed  
13     it -- in fact, you even had a safety valve  
14     where you could extend even that a little  
15     bit; right?

16          A     That's correct. We had up to three  
17     years to use the 800 megahertz spectrum, all  
18     of it. And, thereafter, a small volume, 4  
19     megahertz of that spectrum for an additional  
20     two years, I believe. ]

21          Q     And did you inform the Commission  
22     about what your actual plan was and your  
23     level of confidence about achieving that?

24          A     Yes. I think it's very clear in my  
25     testimony that we were very confident that we  
26     would migrate and complete the migration of  
27     the customers ahead of that timeline, but we  
28     needed that three-year period there for the

1 spectrum to be certain that we had available  
2 and sufficient time to conduct the migration.

3 Q Right. And so when you said  
4 "within the three-year period," does that  
5 indicate you were going to finish it before  
6 the end of the three-year period?

7 A Absolutely. Always the intent.  
8 And we did not want to be in a position where  
9 we were having to give up spectrum that we  
10 had customers on. That's why we put the  
11 three-year timeline in place, but our intent  
12 and our plan was always to help migrate the  
13 customers ahead of that deadline.

14 Q All right. I'm not going to show  
15 you any other examples, Mr. Ray. I'm just  
16 going to you ask again whether you have any  
17 doubt in your mind that you were candid with  
18 the Commission that your intention was to  
19 complete this migration ahead of the three  
20 years?

21 A None whatsoever.

22 Q And based on everything we've  
23 discussed today, do you have any doubt in  
24 your mind that you were truthful and candid  
25 during your prior testimony before this  
26 Commission?

27 A Yes, I do.

28 Q You have a doubt in your mind?

1 Let's try that question again. Do you have  
2 any doubt in your mind that you were truthful  
3 and candid?

4 A I was truthful and candid. There  
5 is no doubt in my mind that was the case.

6 MR. GELFAND: Okay. Thank you. And  
7 your Honor, I am very pleased to say I  
8 completed three minutes ahead of your Honor's  
9 requested deadline for completing the exam.  
10 So thank you for giving us that opportunity  
11 to motor through that, your Honor. I'm very  
12 grateful for it. And that's all the  
13 questions that I have.

14 ALJ BEMESDERFER: Not as grateful as I  
15 am, Mr. Gelfand.

16 During the break, Judge Mason and I  
17 discussed altering the order of this  
18 proceeding slightly. And we are not going to  
19 follow the script that I laid out originally  
20 in the order -- in terms of the order of  
21 questioning. Instead, we've concluded that  
22 it would be most useful to allow -- given  
23 what Mr. Ray's testimony has largely been  
24 about, to allow counsel for DISH to  
25 cross-examine Mr. Ray at this point, and we  
26 will withhold our questions until that  
27 examination is concluded.

28 And Mr. Taff-Rice, are you prepared

1 to do that?

2 MS. TAFF-RICE: Yes, your Honor. I am.

3 ALJ BEMESDERFER: All right. Your  
4 witness.

5 MS. TAFF-RICE: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MS. TAFF-RICE:

8 Q Good afternoon, Mr. Ray.

9 A Good afternoon.

10 Q My name is Anita Taff-Rice, and I  
11 am appearing in this proceeding representing  
12 DISH. I just wanted to just briefly go over  
13 your understanding of what this order to show  
14 cause here is about this afternoon. Do you  
15 understand that you're here today to answer  
16 questions about T-Mobile's representations to  
17 the Commission including T-Mobile's  
18 representation in its response to the order  
19 to show cause?

20 A Yes. I believe we outlined that at  
21 the beginning of the hearing.

22 Q And do you also understand that  
23 this is T-Mobile's opportunity to fully  
24 clarify T-Mobile's prior representations to  
25 the Commission and that today you have an  
26 obligation to be completely forthcoming?

27 MR. GELFAND: Objection, your Honor.  
28 This is a compound question. This witness



1 has no ability to know what the purpose of  
2 the hearing is in terms of completeness.  
3 Obviously you can answer about his knowledge  
4 as to being truthful today.

5 ALJ MASON: (Speaker muted.)

6 MR. GELFAND: Your Honor, you were on  
7 mute. I apologize.

8 ALJ MASON: I just unmute. So if you  
9 could ask -- break your two questions down,  
10 Ms. Taff-Rice.

11 MS. TAFF-RICE: Certainly.

12 Q Mr. Ray, do you understand that  
13 this order to show cause hearing is  
14 T-Mobile's opportunity to fully clarify  
15 T-Mobile's prior representations to the  
16 Commission?

17 MR. GELFAND: Objection, your Honor.  
18 This witness is not competent to testify  
19 about the purpose of this hearing. And I'm  
20 not even sure that's correct especially given  
21 that we have a post-hearing briefing.

22 MS. TAFF-RICE: Your Honor, may I  
23 respond?

24 ALJ MASON: Yes.

25 MS. TAFF-RICE: Thank you, your Honor.  
26 T-Mobile was given the opportunity to present  
27 as many witness as it wanted, and the only  
28 person they chose to present was Mr. Ray.

1 Therefore, it is my understanding that he is  
2 the sole witness who can address the issues  
3 that have been raised in the Commission's  
4 order to show cause. I'm simply trying to  
5 establish that Mr. Ray is completely  
6 cognisant that this is T-Mobile's opportunity  
7 to clarify the misleading statements that the  
8 Commission has already pointed to in the  
9 order to show cause.

10 MR. GELFAND: Object.

11 ALJ MASON: All right. Overruled. You  
12 can answer the question if you understand it,  
13 Mr. Ray.

14 THE WITNESS: Well, I'm not sure I  
15 fully understand the question, your Honor.  
16 I'm here to obviously, you know, provide  
17 testimony and clarify misunderstandings  
18 regarding, you know, my prior testimony and  
19 the company's prior testimony at prior  
20 hearings. That's my purpose as a witness  
21 here today, to provide that information.

22 BY MS. TAFF-RICE:

23 Q Thank you, Mr. Ray. Do you  
24 understand that your testimony today is given  
25 under oath?

26 A I do, yes.

27 Q Do you also understand that your  
28 testimony today is subject to Rule 1.1?

1           A     I'm not sure I know what Rule 1.1  
2     is.   I'm sorry.

3           Q     Well, Rule 1.1 is a requirement  
4     from the Commission that anyone who appears  
5     before it or does business with it is  
6     completely truthful and accurate and that it  
7     does not mislead the Commission through  
8     either artifice or false statements of fact  
9     or law.   Does that help?

10          A     Yes.   I'm clearly not here to  
11     mislead the Commission not here today, and I  
12     was never intending to mislead the Commission  
13     when I prior testified at two hearings.

14          Q     Okay.   Is it your sworn testimony  
15     today that all of the factual statements in  
16     the order to show cause response are  
17     completely accurate and truthful?

18          A     I'm not sure I understand that  
19     question.

20          Q     Well, you're aware that T-Mobile  
21     filed a response to the Commission's order to  
22     show cause including that T-Mobile had made  
23     false misrepresentations and omissions to the  
24     Commission, right?

25          A     I'm sorry.   I'm confused.   I know  
26     what happened.

27          Q     Are you --

28          MR. GELFAND:   I want to object that

1 this misrepresented --

2 MS. TAFF-RICE: If you just let me  
3 finish my question, Mr. Gelfand.

4 ALJ MASON: Remember, counsel, one at a  
5 time. All right. Ms. Taff-Rice, you still  
6 have the floor. Get your question out, and  
7 then if Mr. Gelfand has an objection, I'll  
8 entertain it.

9 BY MS. TAFF-RICE:

10 Q Mr. Ray, are you aware that  
11 T-Mobile submitted a response to the  
12 Commission in response to the order to show  
13 cause?

14 MR. GELFAND: Object, your Honor. This  
15 witness is not presented to talk about a  
16 legal pleading. That's for lawyers. I'd be  
17 happy to answer questions about it if your  
18 Honors have questions about it. But this is  
19 a fact witness. A fact witness can talk  
20 about his prior testimony and the facts as  
21 they exist in the world.

22 ALJ MASON: Mr. Gelfand, the witness  
23 either knows or he doesn't. Okay? He's  
24 either aware of the response that was filed  
25 or he wasn't. So he can answer the question.

26 THE WITNESS: Well, I'm sure I believe  
27 a response was filed, but did I write that or  
28 create that? No, it's a legal filing.

1           ALJ MASON: So you did not review the  
2 response before it was filed with the  
3 Commission, correct?

4           THE WITNESS: I'm not even sure what  
5 response that we're referring to  
6 specifically.

7           ALJ MASON: Thank you.

8 BY MS. TAFF-RICE:

9           Q Mr. Ray, you've given testimony  
10 this morning about the maximum period that  
11 T-Mobile would have been able to take to  
12 complete the CDMA migration, correct?

13          A No, I did not.

14          Q You did not testify repeatedly that  
15 there was a three-year period during which  
16 T-Mobile could complete the CDMA migration?

17          A No. I outlined that there was a  
18 three-year integration period that it was our  
19 plan and intent to meet, but I never  
20 disclosed there was a maximum.

21          Q When you say "three-year  
22 integration period," doesn't that necessarily  
23 mean that the maximum period was three years?

24          A That was our plan.

25          Q So would it be fair to say that was  
26 the outer bound of the migration period?

27          A We always stated, and stated many  
28 times, that the migration process for the

1 Sprint postpaid customers and the Boost  
2 customers, the plan was to make that happen,  
3 that migration, and/or the other work that we  
4 needed to do to integrate and combine these  
5 two networks within the three-year period.  
6 That was our plan.

7 Q So there was never ever a plan that  
8 the network migration could take more than  
9 three years?

10 A No.

11 Q Mr. Ray, didn't you testify this  
12 morning -- or actually, this afternoon, at  
13 this point, that there was a, quote, "safety  
14 valve" in the form of a two-year leaseback  
15 provision that T-Mobile could take advantage  
16 of?

17 A I did.

18 Q And so during that safety valve --  
19 that safety valve gave you an extra two years  
20 to use the CDMA spectrum in case the  
21 migration had not finished within the three  
22 years?

23 A Yes. That was a contingency plan,  
24 but that wasn't a plan to make the migration  
25 activity extend past the three years. That  
26 was an agreement that we struck with DISH and  
27 the Department of Justice whereby if  
28 something changed materially with the plan

1 and the intent and everything we were doing  
2 here that there was a small safety valve to  
3 operate some of the 800 megahertz spectrum  
4 for a period post the three-year  
5 800 megahertz divestiture commitment.

6 Q All right. I would like to ask you  
7 about this safety valve that we've been  
8 discussing, this two-year leaseback period.  
9 That was set forth in a document that  
10 T-Mobile and DISH executed, wasn't it?

11 A I'm sure it was documented as part  
12 of the MNSA that we referred to earlier in my  
13 testimony, yes.

14 Q Are you familiar with the lease --  
15 the license -- I'm sorry -- with the license  
16 purchase agreement or the LPA?

17 A Loosely, yes. I could not recall  
18 the elements or details of that. Sometime  
19 back, but...

20 Q Mr. Ray, you were involved in the  
21 negotiation of the LPA, were you not?

22 A Somewhat.

23 Q If you would take a look, please,  
24 at what's been marked as DISH Exhibit OSCD-4.  
25 Do you have that in front of you, sir?

26 A I don't yet. Just give me a  
27 second.

28 MS. TOLLER: Your Honor, we need a

1 second. We're pulling that up from -- trying  
2 to pull that up from the electronic website.  
3 Ms. Taff-Rice, this is something that you  
4 posted on the Commission's shared document  
5 site yesterday?

6 MS. TAFF-RICE: Yes, it's on the  
7 Commission's document site.

8 ALJ MASON: And again, Ms. Rice --  
9 Taff-Rice that's DISH OSC -- what was the  
10 number again, please.

11 MS. TAFF-RICE: It's was OSC-4.

12 ALJ MASON: Thank you.

13 MS. TOLLER: And your Honor, I do  
14 believe I have a hardcopy of that as well,  
15 which I can -- purchase agreement dated July  
16 12, 2020. This was attached to --

17 (Interruption by reporter.)

18 MS. TOLLER: Yes. I was just letting  
19 you know that I was going to show Mr. Ray a  
20 hardcopy of that same exhibit. Can you hear  
21 me all right?

22 THE REPORTER: (Nodding head.)

23 BY MS. TAFF-RICE:

24 Q Do you have that in front of you  
25 now, Mr. Ray?

26 A The electronic document is showing,  
27 yes.

28 Q Great. And in that document,



1 there's Section 5.2, and the heading of that  
2 is Leaseback Option.

3 MR. GELFAND: Do you need a page  
4 number? I'm sorry. Are you looking for a  
5 page number? What is the page number of the  
6 exhibit, please?

7 MS. TAFF-RICE: It's page No. 13.

8 MR. GELFAND: Okay. Thank you.

9 BY MS. TAFF-RICE:

10 Q You have that in front of you now,  
11 Mr. Ray.

12 A I do.

13 Q And I'll just read the very first  
14 part of the paragraph for expediency here.  
15 It says:

16 Seller shall have the right  
17 exercisable by giving written  
18 notice to purchaser by no later  
19 than the second anniversary of the  
20 merger closing date, the seller's  
21 irrevocable commitment to exercise  
22 such option to lease back 2 by 2  
23 megahertz of spectrum nationwide  
24 under the seller licenses (subject  
25 to the proviso below with respect  
26 to the specified BEAs) for a  
27 two-year term commencing on the  
28 closing date.

1 Did I read that correctly?

2 A I believe so.

3 Q And further what it says is that  
4 this spectrum that's going to be purchased is  
5 reasonably required to operate one CDMA  
6 carrier for the applicable service area.

7 Did I read that correctly?

8 A Just tracking with you. Hold on.

9 MR. GELFAND: You skipped some text; is  
10 that right?

11 MS. TAFF-RICE: It's on page 13,  
12 Section 5.2.

13 THE WITNESS: I see the "reasonably  
14 required to operate one CDMA carrier for the  
15 applicable service area."

16 BY MS. TAFF-RICE:

17 Q Okay. And what that means is that  
18 T-Mobile would be able to use the 800  
19 megahertz spectrum to, quote, "operate one  
20 CDMA carrier for the applicable service  
21 area," correct?

22 MR. GELFAND: Objection, your Honor.  
23 Lack of foundation. The witness has not  
24 established that he has enough knowledge of  
25 this document to testify about its meaning,  
26 and he's not a lawyer. This is a question of  
27 legal interpretation.

28 MS. TAFF-RICE: Your Honor, may I

1 respond?

2 ALJ MASON: I'm sorry. Yes, yes. You  
3 may respond.

4 MS. TAFF-RICE: Thank you. This is a  
5 technical document. This is a discussion  
6 about spectrum leaseback. Mr. Ray has, in  
7 fact, testified that he was involved and has  
8 some knowledge about this document, and he is  
9 the only witness that T-Mobile chose to put  
10 forward today.

11 ALJ MASON: All right.

12 MR. GELFAND: Your Honor, if I may  
13 respond to that, please.

14 ALJ MASON: No. Mr. Ray can answer the  
15 question to the extent he can.

16 THE WITNESS: Sorry to do this, but  
17 could we repeat the question. I lost the  
18 thread.

19 MS. TAFF-RICE: This leaseback option  
20 in Section 5.2 of the lease purchase -- of  
21 the license purchase agreement would enable  
22 T-Mobile to use the 800 megahertz spectrum  
23 to, quote, "operate one CDMA carrier for the  
24 applicable service area," right?

25 MR. GELFAND: Same objection.

26 ALJ MASON: Overruled.

27 THE WITNESS: I can answer the  
28 question. It doesn't say -- it says it's

1 reasonably required to operate one CDMA  
2 carrier. It doesn't say that the spectrum  
3 would be utilized for that. It provides a  
4 statement that there is sufficient spectrum  
5 there, if you so decided to operate the CDMA  
6 carrier, that you could do so.

7 BY MS. TAFF-RICE:

8 Q And the reason that you would need  
9 to use that spectrum is if the three years  
10 had not been enough to fully migrate all of  
11 the customers off of the CDMA service, right?

12 A Potentially. I mean, this was a  
13 leaseback option. So we had a three-year  
14 agreement whereby DISH will purchase the 800  
15 megahertz spectrum, and we agreed that -- and  
16 that's a national average of 14 megahertz of  
17 spectrum. And we agreed with DISH that a  
18 contingency would be allowed to extend 4  
19 megahertz of that 14 megahertz for a period  
20 of 2 years.

21 Q That would be a for a total of  
22 five, correct?

23 A That four megahertz would have been  
24 for a period of three plus two. Yes, five.

25 Q So your earlier testimony was  
26 insistent that, in fact, it was only a  
27 three-year period that T-Mobile would use to  
28 do the migration, but it's actually true that

1 T-Mobile had a five-year period. It was  
2 never going to end at three years. You had a  
3 safety valve that allowed you an additional  
4 two years to continue to use the 800  
5 megahertz spectrum for the CDMA service?

6 MR. GELFAND: Objection to the compound  
7 question.

8 ALJ MASON: Overruled.

9 THE WITNESS: So as I provided in my  
10 earlier testimony, we agreed that there would  
11 be an 800 megahertz divestiture of spectrum  
12 after three years and that the plan and the  
13 commitment and the obligations of both  
14 parties would support the full migration of  
15 the requisite customer basis for both  
16 Sprint -- sorry -- for T-Mobile and DISH  
17 within that period. Actually in a much  
18 shorter period as per the notice period  
19 provisos. And so that was the plan and the  
20 intent. There was a safety valve whereby  
21 four megahertz could be leased for another  
22 two-year period. That's all that was. We  
23 never made a statement that CDMA -- that CDMA  
24 network would be maintained for three years  
25 let alone five years. That was not the  
26 intent. That was not the agreement between  
27 DISH and T-Mobile, and the MNSA is very clear  
28 of the notice provisions and the timelines

1 within which both companies agreed to go and  
2 make this migration happen.

3 Q So Mr. Ray, I'm going to read to  
4 you a sentence in T-Mobile's response to the  
5 order to show cause and just ask if you agree  
6 with it. The sentence states:

7 T-Mobile's statements about a  
8 three-year migration period  
9 referred to an outer bound for  
10 T-Mobile to complete its network  
11 migration. T-Mobile is candid  
12 that its plan was to complete this  
13 work within three years, not take  
14 the full three years to do so.

15 That's not consistent with what we've just  
16 been talking about. T-Mobile actually had a  
17 five-year period -- has a five-year period  
18 during which it can migrate CDMA customers  
19 because there's a three-year transition  
20 period and there's a two-year safety valve  
21 period, right?

22 MR. GELFAND: Objection. Misstates --

23 ALJ MASON: Overruled. Ms. Taff-Rice,  
24 what page were you just reading from the  
25 response?

26 MS. TAFF-RICE: Your Honor, I'm reading  
27 from page 3 of T-Mobile's response to the  
28 order to show cause.

1 ALJ MASON: Thank you.

2 MS. TAFF-RICE: Thank you, your Honor.

3 MR. GELFAND: Your Honor, may I be  
4 heard on this line of questions because the  
5 suggestion that somehow our response brief  
6 which was referring to this three-year period  
7 before the divestiture of 800 had to happen  
8 was -- I guess the suggestion is we were  
9 somehow trying to hide the fact that there  
10 was an option, if needed, beyond that, but  
11 that's just not an issue in these  
12 proceedings. And this witness is not -- he  
13 is not here to talk about our response brief.

14 ALJ MASON: He can testify -- brief.  
15 If he has some knowledge about it, he can  
16 answer the question, Mr. Gelfand. So your  
17 objection is overruled. I don't know  
18 if Mr. -- Mr. Ray, if you've got the question  
19 in front of you or if we need Ms. Taff-Rice  
20 to ask the question again.

21 THE WITNESS: It would be helpful to  
22 see the document, if we could do that.

23 MS. TOLLER: Your Honor, may I share a  
24 copy?

25 MS. TAFF-RICE: It's been marked as  
26 DISH Exhibit OCD-1 (sic).

27 ALJ MASON: And yes, Ms. Toller, you  
28 may show the document to the witness.

1 THE WITNESS: Sorry. Is the ball in my  
2 court? Could we repeat the question.

3 MS. TAFF-RICE: I was just waiting to  
4 see if you had that in front of you, Mr. Ray.

5 ALJ MASON: Ms. Toller, were you  
6 getting the documents?

7 MS. TOLLER: I'm sorry, your Honor. He  
8 does have it in front of him. I apologize.

9 ALJ MASON: Thank you. So turn to page  
10 3. That's where you were referring, Ms.  
11 Taff-Rice?

12 MS. TAFF-RICE: Yes, it was, your  
13 Honor.

14 ALJ MASON: All right. Let's find that  
15 line again for the witness.

16 BY MS. TAFF-RICE:

17 Q Mr. Ray, you may want to direct  
18 your attention to some bullet points. It's  
19 the last bullet point on page 3.

20 A I see it.

21 Q I'll just read it again for the  
22 clarity of the record. What T-Mobile said in  
23 its response to the Commission's order to  
24 show cause was, quote:

25 The OSC alleges that T-Mobile and  
26 DISH would have up to three years  
27 to complete the Boost customer  
28 migration, but T-Mobile did not



1                   say this. T-Mobile's statements  
2                   about a three-year migration  
3                   period refer to an outer bound for  
4                   T-Mobile to complete its network  
5                   migration.

6   You see those two sentences?

7           A    I do.

8           Q    As a technologist, we've just  
9               discussed the term "outer bound" means the  
10              maximum period of time to do something,  
11              right?

12           MR. GELFAND:  Objection, your Honor.  
13           Is he a linguist now?

14           ALJ MASON:  Overruled.  Do you  
15           understand here where it says "outer bound,"  
16           Mr. Ray?

17           THE WITNESS:  I believe so.

18           ALJ MASON:  All right.  You can answer  
19           the question.

20           THE WITNESS:  What was the question?

21   BY MS. TAFF-RICE:

22           Q    The question was:  T-Mobile in its  
23               response to the order to show cause stated  
24               that the three-year migration period was,  
25               quote, "an outer bound" for T-Mobile to  
26               complete its network migration.

27                   My question to you was:  The  
28           term -- doesn't the term "outer bound" mean

1 the maximum time period?

2 A Well, as I testified at length  
3 already today, the T-Mobile and DISH plan --  
4 T-Mobile and DISH plan was to conduct this  
5 migration within a three-year period and to  
6 ensure that we could rapidly bring the  
7 benefits of, you know, this combined network  
8 and LTE and 5G services to a CDMA customer  
9 base that were fully served by the legacy and  
10 data technology. That was the T-Mobile and  
11 DISH agreement, to move through this  
12 migration as quickly as it was practicable  
13 and pragmatic. And we outlined -- we never  
14 said that was going to take the three-year  
15 period.

16 Q Mr. Ray, I would like to direct  
17 your attention to something I know you're  
18 going to be familiar with because it is the  
19 transcript from the testimony you gave in  
20 December of 2019 that's been marked as  
21 Exhibit OSC TMO-33. If you could perhaps  
22 bring that up in front of you.

23 MS. TOLLER: Do you have a page number,  
24 Ms. Taff-Rice?

25 MS. TAFF-RICE: Yes. It's page No.  
26 1373, and it begins at line 24.

27 Q Do you have that in front of you,  
28 Mr. Ray?

1           A     It's up on the monitor, yes.

2           Q     And, again, I'll just read it for  
3 the clarity of the record. The quote from  
4 you under oath in December of 2019 was,  
5 quote:

6                     We would use the 800 megahertz.  
7                     Why we want to use it for that  
8                     three years is during the  
9                     migration process --

10          A     I'm sorry. That's not the page  
11 that's up in front of me. Hold on.

12          MR. GELFAND: Which page was it? 1373,  
13 did you say?

14          ALJ MASON: I think you meant 1374.

15          MS. TAFF-RICE: Thank you for that  
16 correction, your Honor.

17          MS. TOLLER: And which line,  
18 Ms. Taff-Rice?

19          ALJ MASON: It should be line 23.

20 BY MS. TAFF-RICE:

21          Q     Do you have that in front of you,  
22 Mr. Ray?

23          A     I do.

24          Q     So, again, I'll just read this into  
25 the record, quote -- this is you  
26 testifying -- quote:

27                     We would use the 800 megahertz.  
28                     Why we want to use it for that

1           three years is during the  
2           migration process of Sprint and  
3           Boost customers off of the legacy  
4           Sprint network and the Sprint  
5           services and onto the New T-Mobile  
6           network. So our intent is to --  
7           that's why we put three years  
8           there. If we determine we need  
9           longer, we have the right. We  
10          negotiated that through the PFJ  
11          with the DOJ and with DISH so that  
12          we could retain a portion of the  
13          800 megahertz for up to 5 years.

14        So with that testimony in mind, Mr. Ray,  
15        would it be accurate for T-Mobile to state  
16        today that the outer bound of the network  
17        migration for CDMA was only three years?

18           A    Yes, absolutely. That was our  
19        intent. That was our plan. That was the  
20        commitment that was worked up between both  
21        DISH and T-Mobile and the DOJ, that we would  
22        work through this migration quickly but  
23        notice periods could be provided within six  
24        months and that the migration would be  
25        expedited.

26                The fact that there was some  
27        sub-spectrum that was available as a  
28        contingency plan, that did not change the

1 agreements and commitments that we were  
2 making to migrate these customer sets at pace  
3 to deliver all of the benefits that we  
4 discussed with DISH and the DOJ at length. ]

5 Q It suggested that T-Mobile wasn't  
6 sure it could complete the migration in three  
7 years; otherwise; you'd need no safety valve  
8 for an additional two years; isn't that true?

9 A Well, we did not know for sure that  
10 the migration activity could be completed,  
11 and so as an insurance policy, voiceover  
12 spectrum was provided as a contingency, but  
13 that did not change the plan and the intent  
14 and the obligation of both parties to pursue  
15 the migration of the customers in alignment  
16 with all of the conditions of the MNSA.

17 ALJ MASON: Let's stop for just a  
18 second. I was getting an alert from the  
19 court reporter.

20 (Off the record.)

21 ALJ MASON: We will continue.

22 MS. TAFF-RICE: Thank you, your Honor.

23 Q Mr. Ray, I'd now like to direct  
24 your attention to the exhibit that's been  
25 marked as DISH OSCD-02, please.

26 MR. GELFAND: Your Honor, we're not  
27 sure what document this is. We are  
28 struggling here a little bit. Can we have an

1 identification of the document?

2 ALJ MASON: OSCD-02; is that right?

3 MS. TAFF-RICE: Yes, that's right.

4 OSCD-02, the DISH Exhibit No. 2. It was  
5 uploaded to the Commission's website. It's  
6 also on the spreadsheet that the IT  
7 department prepared.

8 MR. GELFAND: Your Honor, instead of us  
9 having to guess, can we just have an  
10 identification of what this is, please. We  
11 are having trouble with the reference number.  
12 I'm sorry.

13 ALJ MASON: What is the document,  
14 Ms. Taff-Rice? You've given me the number,  
15 but what is the document?

16 MS. TAFF-RICE: It's a three-page  
17 excerpt of various origins of Mr. Ray's both  
18 prewritten file testimony in November 2019,  
19 as well as his hearing testimony in December  
20 2019. So it looks like a chart.

21 ALJ MASON: Mr. Ray, do you have that  
22 document in front of you?

23 THE WITNESS: It is still loading on my  
24 monitor.

25 MR. GELFAND: Your Honor, as it  
26 continues to load and this document is  
27 delayed, I do want to make an objection to  
28 the use of this exhibit. Apparently, this is

1 testimony that's compiled into a summary page  
2 without the complete context. I think if the  
3 witness is going to be asked about his prior  
4 testimony, we ought to do it like it's always  
5 done, which is he ought to be shown the  
6 transcript so he has an opportunity, if he  
7 wishes, to look at the prior question, maybe  
8 the next question, to read the whole answer.  
9 I think it's unfair to the witness to show  
10 him selected quotes that DISH's lawyers have  
11 decided are the ones that they want him to  
12 read. I've just never seen that done before,  
13 your Honor; so I object to pursuing this  
14 questioning in this way.

15 (Crosstalk.)

16 ALJ MASON: I will overrule --

17 MS. TAFF-RICE: May respond to that?

18 ALJ MASON: I'm overruling the  
19 objection. You can ask him the questions  
20 based on the snippets you're providing.

21 Mr. Gelfand, if you think that there  
22 is something that's out of context there, you  
23 can certainly address that, but I'm going to  
24 allow the question.

25 MR. GELFAND: All right. Thank you,  
26 your Honor. May Mr. Ray please have the  
27 opportunity to tell your Honor, if he  
28 believes it would be helpful, to turn to the

1 real transcript if he is struggling with any  
2 of these excerpts.

3 ALJ MASON: Let's just see if he can  
4 the answer first.

5 MR. GELFAND: Thank you.

6 BY MS. TAFF-RICE:

7 Q Mr. Ray, do you have that exhibit  
8 in front of you?

9 A I have it loaded on the monitor  
10 itself; so forgive me, I'll be looking down.

11 Q You are familiar with the contents  
12 of the Commission's order to show cause;  
13 correct?

14 A I've seen it, yes. If I'm familiar  
15 with the various elements and contents of it,  
16 no.

17 Q Well, didn't Mr. Gelfand spend  
18 quite a bit of time this morning and this  
19 afternoon walking you through the five  
20 different elements that the Commission  
21 believes T-Mobile --

22 A He did. You just asked me if I  
23 knew the whole thing front to back.

24 Q I asked if you knew what the  
25 contents were.

26 A Isn't that the same thing?

27 Q Well, let's make this easier. I'll  
28 just read one of the specific items that you



1 had a discussion with Mr. Gelfand about this  
2 morning and this afternoon. The order to  
3 show cause states, quote:

4 T-Mobile previously stated that  
5 service would be maintained for  
6 Boost customers until migration  
7 was completed during the migration  
8 period (2020 to 2023).

9 Is that from the order to show  
10 cause?

11 A Well, you're asking me to look at  
12 two documents at once. So let me find that  
13 and then we can go back to the other  
14 documents. So I think you just quoted at me  
15 Item No. 4; is that correct?

16 Q That's right, Mr. Ray.

17 A Okay.

18 Q Do you agree with that statement?

19 A No. From my earlier testimony, we  
20 talked about this a fairly lengthy amount of  
21 time that that's not the case.

22 Q Mr. Ray, I think we've already seen  
23 in the excerpts that Mr. Gelfand walked you  
24 through this morning both from your  
25 supplemental testimony that was submitted in  
26 November of 2019 and your hearing testimony  
27 in December of 2019, there was a large number  
28 of references to a three-year migration

1 period, a three-year customer migration, all  
2 kinds of variations, but always using the  
3 words "three years"; do you remember that?

4 MR. GELFAND: Objection, your Honor. I  
5 might have shown him three or four examples  
6 to that, but that's a far cry from whatever  
7 it is Ms. Taff-Rice is --

8 ALJ MASON: Sustained. Ms. Taff-Rice,  
9 if you've got something specific you want the  
10 witness to focus on, please do so.

11 MS. TAFF-RICE: Thank you, your Honor.

12 Q You do recall using the term  
13 "three-year migration period"; correct,  
14 Mr. Ray?

15 A We talked about a migration period.  
16 There were excerpts from my testimony of  
17 three years, but there was context also that  
18 would all be -- we would work the migration  
19 within that three-year period and there would  
20 be a three-year integration period that would  
21 encompass both network preparation, migration  
22 of customers, and also the decommission.

23 So there are multiple references  
24 to, you know, a three-year period. The key  
25 piece was just the migration activity was  
26 planned and agreed to by both parties, by  
27 DISH and T-Mobile, that migration would occur  
28 within that three-year period.

1           Q     Mr. Ray, would you accept, subject  
2 to check, that you actually used a reference  
3 to it, the migration period, 14 different  
4 times?

5           MR. GELFAND:   Object, your Honor.

6           THE WITNESS:   I have no idea if there  
7 were one, two, three, or 10 or 14.

8 BY MS. TAFF-RICE:

9           Q     But it was multiple times.   It  
10 wasn't just once?

11          A     Yes.   But I've explained the  
12 context all morning of how that three-year  
13 period was the period within which we planned  
14 to conduct the migration, and it was very  
15 clear that DISH's obligation was to migrate  
16 their customers within the notice provision  
17 that T-Mobile provided, and I think we  
18 provided very clear evidence, which was put  
19 in front of the Commission, that notice  
20 period was a minimum of six months, and we  
21 provided DISH a period of 15 months so that  
22 is the discussion.

23                 The discussion is that within that  
24 15-month period, will the obligations of the  
25 respective parties be met.

26          Q     Well, in the interest of time, I'm  
27 just going to direct your attention to one  
28 particular passage that, I believe,

1 Mr. Gelfand walked through with you this  
2 morning, and that's on Exhibit No. 2 that  
3 you're looking at. It's the second row, and  
4 this is from your November 2019 supplemental  
5 testimony submitted to the Commission. It's  
6 at page 20, on line 22.

7 Do you see the box I'm talking  
8 about?

9 A I do. It would be helpful if I  
10 could see the balance for context.

11 MR. GELFAND: Your Honor --

12 BY MS. TAFF-RICE:

13 Q We can open it and look at that  
14 page. It's been marked as T-Mobile Exhibit  
15 No. 23.

16 A I'm sorry. What was the page  
17 reference and line number?

18 Q Page reference is 20, beginning at  
19 line 22.

20 A Yes. I see it.

21 Q And the question starts:

22 You also stated in your prior  
23 testimony that, quote, 'T-Mobile  
24 will not terminate the CDMA  
25 network in any market without  
26 migrating users from the network  
27 first.' How did the FCC and DOJ  
28 commitments impact that testimony?

1           Have I read that question correctly?

2           A    Yes.

3           Q    There's an answer below it.  And  
4 let's be clear, these are canned questions  
5 and answers you wrote in advance and then  
6 submitted to the Commission in written form;  
7 correct?

8           A    I'm not sure I know what "canned"  
9 means.

10          Q    It means it was written in advance  
11 on a piece of paper, not given live, Mr. Ray.

12          A    This was written -- I mean,  
13 provided ahead of the hearing to explain our  
14 answers to questions that had been raised by  
15 the Commission, and we used this rather than  
16 do -- consume the Commission's time with  
17 direct testimony.  We used this written form  
18 of response.

19          Q    And the answer that you provided to  
20 the Commission, the last sentence of it says:

21                I would also reiterate that  
22                T-Mobile intends to maintain the  
23                800 MHz spectrum for three years  
24                to support CDMA service during our  
25                migration process and that we have  
26                an option to lease 4 MHz of  
27                spectrum for additional time if  
28                required.

1 Did I read that correctly?

2 MR. GELFAND: Your Honor, I object. I  
3 think the witness should be allowed to read  
4 the full answer, which is actually all set  
5 forth in DISH's own exhibit. So I think he  
6 should be allowed to reference the entire  
7 context, not just the last sentence, I  
8 believe, in fairness to the witness.

9 ALJ MASON: Objection overruled. If  
10 counsel just wants to just focus on that one  
11 sentence, let's deal with that. If there are  
12 other things to deal with, we can deal with  
13 that later, but for now she wants to focus on  
14 the last sentence and the witness can be  
15 asked about that.

16 BY MS. TAFF-RICE:

17 Q Did I read that sentence correctly,  
18 Mr. Ray?

19 A The last sentence of that section?

20 Q Yes.

21 A I believe so.

22 Q And this prewritten testimony that  
23 we've just talked about, you had an  
24 opportunity to review that before we --

25 A I believe so.

26 Q And at the time that it was  
27 submitted to the Commission, you believed it  
28 was truthful and accurate; correct?

1           A     Correct.

2           Q     So is there anywhere in your  
3 November 2019 pre-filed, written testimony,  
4 where you ever characterized the CDMA  
5 customer migration period as a two-year  
6 period?

7           A     There isn't a place in the  
8 testimony where we portrayed it as a  
9 three-year period.

10          Q     Well, maybe, I can read this to you  
11 again. And I don't want to take up too much  
12 time, but, again, directing you back to page  
13 20, starting at line 22, the sentence just  
14 read was -- this is your testimony:

15                   I would also reiterate that  
16                   T-Mobile intends to maintain the  
17                   800 MHz spectrum for three years  
18                   to support CDMA service during our  
19                   migration process, and that we  
20                   have an option to lease 4 MHz of  
21                   spectrum for additional time if  
22                   required.

23                   That mentions three years for a  
24 migration process; right?

25          MR. GELFAND: I'm sorry, your Honor.  
26 This is really unfair. At the beginning of  
27 that answer, Mr. Ray said this did not apply  
28 to the Boost customers. And DISH is trying

1 to characterize this sentence by not letting  
2 him read the full context as if it applies  
3 broadly. He modifies his prior testimony to  
4 say it only applies to the customers not  
5 being divested, who are not divested.

6 ALJ MASON: All right. I'm overruling  
7 the objection. He can answer the question.

8 THE WITNESS: Well, clearly, my whole  
9 answer, it explains our policies regarding  
10 migration were around the Sprint post-paid,  
11 the nondivested, but Boost had the  
12 responsibility to migrate their customers.

13 I would also state that the sentence  
14 that's been highlighted states that we would  
15 maintain the 800 MHz spectrum for three  
16 years. It then says to support CDMA service.  
17 It doesn't say that we're going to maintain  
18 CDMA service for three years, and I stand by  
19 testimony that we never said that. We never  
20 said that we would maintain the CDMA network  
21 for three years. We had no reason to. It  
22 was never requested by DISH at any point in  
23 time that I can recall in all of these  
24 proceedings and contractual discussions.

25 So why on earth would we have said  
26 it? We had a spectrum arrangement that  
27 allowed us to keep the spectrum for three  
28 years before it was sold to DISH, but the



1 plan was always to migrate the customers  
2 within that three-year period and not to  
3 maximize time for that migration activity.

4 So the sentence says we're going to  
5 maintain the 800 megabyte spectrum. It  
6 doesn't say we're going to maintain CDMA  
7 services for three years.

8 Q Mr. Ray, was it T-Mobile's  
9 intention to maintain the 800 MHz spectrum  
10 and not use it?

11 A I'm not sure I understand your  
12 question.

13 Q Well, I believe you're trying to  
14 draw a distinction between maintaining the  
15 800 MHz spectrum for three years and using it  
16 for CDMA; aren't you?

17 A Not at all. We used the 800  
18 spectrum as well as CDMA services.

19 (Crosstalk.)

20 ALJ MASON: Hold on. Let's let the  
21 witness finish his answer and then,  
22 Ms. Taff-Rice, continue.

23 THE WITNESS: Where does it say in that  
24 sentence that, you know, we're not going to  
25 use the 800 MHz, for example, within that  
26 three-year period?

27 Q It doesn't, Mr. Ray. That's what  
28 you just testified to live.

1           A     I said we're going to maintain the  
2 spectrum for three years, and our plan was to  
3 maintain spectrum for multiple purposes: LTE  
4 services, CDMA services, during migration, et  
5 cetera.

6           Q     Thank you.

7                     And, again, just to ask one more  
8 question on this. Is there anywhere in your  
9 testimony whether it was pre-filed testimony  
10 from November of 2019 or the testimony during  
11 the hearing in December of 2019 where you  
12 testified to an 18-month CDMA customer  
13 migration period?

14           A     I'm sorry. Could you repeat that  
15 question?

16 BY MS. TAFF-RICE:

17           Q     Sure. In your testimony, in your  
18 pre-filed testimony that was submitted to the  
19 Commission in 2019, and, again, thinking  
20 about your hearing testimony in December  
21 2019, is there any instance you can point to  
22 where you testified about an 18-month CDMA  
23 customer migration period?

24           A     Well, there would have been no  
25 reason to. The agreement between DISH and  
26 T-Mobile -- I'm sorry to keep repeating my  
27 testimony here, but the agreement between  
28 DISH and T-Mobile, CDMA shutdown was

1 contingent on notice period. Not on any  
2 other deadline. It was clearly stated. We  
3 looked at the testimony in the documentation  
4 within the MNSA earlier on, DISH agreed to  
5 it. We agreed to it. And the Department of  
6 Justice oversaw it and agreed to it, and that  
7 is the only -- that's the only place where we  
8 talk about CDMA services being maintained  
9 within a specific period of time per the  
10 notice agreement that was structured between  
11 DISH and T-Mobile.

12 Q Thank you, Mr. Ray. I appreciate  
13 the extra information, but I actually just  
14 asked you if you had any point in your  
15 testimony where you described the CDMA  
16 customer migration period as 18 months, and I  
17 take it your answer is no?

18 A No. I will repeat my prior  
19 comment, my prior statement.

20 The only statement that was  
21 provided around when CDMA service would be  
22 terminated and shut down was in relation to  
23 the notice period. So that by definition,  
24 there is no place where a six-month,  
25 12-month, 14-month, 18-month, 24-month period  
26 would have been defined.

27 The agreement between the two  
28 parties was to shut down the CDMA network

1 within the given notice period. That was six  
2 months. And we provided DISH 15 months, six  
3 months after the closure of the deal.

4 ALJ MASON: All right. It's 2:45. I  
5 just want to let everyone know that at 3:00  
6 we're going to take a 10-minute break.

7 MS. TAFF-RICE: Thank you, your Honor.

8 Q Mr. Ray, this Commission was not  
9 the only place that you testified about the  
10 CDMA customer migration issue; is it?

11 A I believe I testified -- I'm trying  
12 to think. The only other place I testified  
13 in relation to this transition was in the  
14 Supreme Court in New York I believe.

15 Q All right. That was in December of  
16 2019 as well; wasn't it?

17 A Yes. Literally days after we were  
18 talking with the Commission on the December  
19 19th hearing.

20 MR. GELFAND: Your Honor, just for good  
21 order, the US District Court.

22 THE WITNESS: District Court. That's  
23 me thinking it was bigger.

24 BY MS. TAFF-RICE:

25 Q So, Mr. Ray, could you please turn  
26 to what's been marked as Exhibit OSCD-07. Do  
27 you have that in front of you, Mr. Ray?

28 A I do. It's on the monitor.

1           Q    Do you recognize this as being a  
2 transcript from the testimony that you just  
3 testified you gave in December of 2019 in a  
4 New York court?

5           A    Let me take a quick look at it.  
6 It's hard to track on the -- I do have the  
7 paper document in front of me now. Give me  
8 one second. Yes. I believe this is my  
9 testimony in New York with Judge Marrero.

10          Q    Could you please turn to page 1204  
11 of that transcript?

12          A    I have that page.

13          Q    Do you see a question and answer  
14 that starts:

15                   Are you anticipating that anyone  
16                   will experience a worse service  
17                   during the integration process?

18          A    Is there a line?

19          Q    I believe it's line 12.

20          A    Page?

21          Q    I'm sorry. I apologize, your  
22 Honors. It's page 1206 and it's line 7.

23          A    I see the question.

24          Q    And the answer there -- the  
25 question again is:

26                   Are you anticipating that anyone  
27                   will experience a worse service  
28                   during the integration process?

1                   And your answer is: "Absolutely  
2 not"; correct?

3           A     I see that.

4           Q     Absolutely not. Our plan -- and  
5                   we made sure that didn't happen in  
6                   Metro PCS, and it behooves us to  
7                   not to do that(sic). If we lower  
8                   quality, we face churn. And we  
9                   referenced the churn in Metro PCS  
10                  was almost non-existent, from my  
11                  memory, and we plan to do the same  
12                  thing here with Sprint. We  
13                  absolutely will not inflict pain  
14                  on the legacy customer base that  
15                  doesn't have a compatible handset.  
16                  But we'll give three years and  
17                  we'll work through this and do  
18                  much of the same things that we  
19                  did with Metro.

20                  Do you see that?

21           A     I do.

22           Q     So, again, there's a reference to  
23 T-Mobile is going to give three years to work  
24 through the customer migration process.

25           A     Doesn't say that we'll take three  
26 years.

27           Q     It does say, We'll give it (sic)  
28 three years.

1           A     "But we'll give three years and  
2 we'll work through this."

3                     My testimony -- and I remember  
4 it -- was to outline that within a three-year  
5 period we would look to migrate the  
6 customers, and on the balance of the previous  
7 testimony that you read, clearly DISH's  
8 obligation to migrate their Boost customers  
9 during that period.

10                    So my statements around the  
11 customer treatment restricted to T-Mobile  
12 customers in this case, the sprint post-paid  
13 customer; whereas DISH and Boost are  
14 responsible for their experience for the  
15 Boost customers.

16                    And my statement to give it three  
17 years is to say we believe that we will get  
18 this done. We're going to work this within  
19 the three-year period. And I talk about -- I  
20 believe in here -- maybe I saw it on the  
21 prior page.

22                    Yes. It's in this testimony, a  
23 referencing what we did with Metro PCS, which  
24 was a very similar, you know, migration  
25 period. Actually, with Metro PCS, the  
26 customers effectively all required transit  
27 change-outs. The customer volumes were  
28 actually very similar to the Boost base in

1 that case, and we were highly successful in  
2 that migration and customer treatment.

3 And, obviously, our intended plan  
4 was to replicate that success, you know, with  
5 this divestiture in combination between  
6 T-Mobile and Sprint with DISH as a third  
7 party. We would give, you know, a period of  
8 time within which we'd go work this with a  
9 plan and we would make it happen within a  
10 three-year period.

11 Q Again, the only period you ever  
12 reference is three years.

13 MR. GELFAND: Objection. What's the  
14 context of that? Only referenced in this  
15 answer?

16 MS. TAFF-RICE: I'll withdraw the  
17 question and move on, your Honor, in the  
18 interest of time.

19 ALJ MASON: Saves me the trouble of  
20 sustaining the objection.

21 BY MS. TAFF-RICE:

22 Q Mr. Ray, given that we now had a  
23 discussion, and you had a discussion with  
24 Mr. Gelfand this morning and afternoon  
25 continuing to reference the three-year  
26 customer migration period, is it your  
27 testimony today that you think it's  
28 unreasonable that the Commission has the



1 belief that T-Mobile was expecting to have a  
2 three-year customer migration period?

3 MR. GELFAND: Objection, your Honor.  
4 This is not an expert in figuring out what is  
5 reasonable for the Commission to understand.  
6 The issue in this case is whether false  
7 statements were made in 2019. I don't  
8 understand that question, your Honor.

9 ALJ MASON: Mr. Ray, do you understand  
10 the question?

11 THE WITNESS: I've already forgotten  
12 it, your Honor. Could we reread it or  
13 reposition it or restate it?

14 ALJ MASON: All right. I'm going to  
15 overrule the objection, and Ms. Rice, you can  
16 ask your question again.

17 MS. TAFF-RICE: Thank you, your Honor.

18 Q We've had a long discussion this  
19 morning and this afternoon both through  
20 Mr. Gelfand's direct examination of you and  
21 through my cross-examination of you where we  
22 have referred multiple different times to a  
23 three-year customer migration.

24 And my question to you was, is it  
25 your position, speaking on behalf of T-Mobile  
26 this morning, the only T-Mobile witness, is  
27 it your opinion that it was unreasonable for  
28 the Commission to draw the conclusion that

1 T-Mobile was intending to have a three-year  
2 CDMA customer migration period?

3 MR. GELFAND: Objection, your Honor.  
4 First of all, the last testimony was  
5 provided --

6 ALJ MASON: Overruled. I'll want to  
7 hear the answer.

8 THE WITNESS: I'm sorry, your Honor.  
9 There were multiple statements within the  
10 question, and then a question at the end,  
11 which I wasn't clear I understand. So sorry  
12 to ask for this again, but could we for the  
13 last time repeat the question. ]

14 BY MS. TAFF-RICE:

15 Q We discussed earlier that there are  
16 repeated references to a three-year migration  
17 period in your testimony to the Commission  
18 regarding CDMA migration; correct?

19 A Can we pause there? Is that the  
20 first question?

21 Q That's the first question.

22 A Okay. Then there are references to  
23 a period of migration. And we have provided  
24 testimony throughout the day that outlines  
25 that the intent and the plan was to conduct  
26 that migration within a three-year period.  
27 And, also, we've provided testimony that the  
28 obligation of both parties regarding

1 migration was to conduct that within the  
2 notice periods specified in the contract  
3 between Dish, T-Mobile, and the Department of  
4 Justice.

5 Q And you do understand, I believe we  
6 discussed earlier, that under Rule 1.1, one  
7 does not have to have an intention to mislead  
8 the Commission?

9 It's just: Did the Commission get  
10 misled?

11 MR. GELFAND: Objection. It says, "Get  
12 mislead by an artifice or a false statement."  
13 That is a misrepresentation of this witness  
14 about what the rule says, your Honor. And  
15 that is not fair.

16 ALJ MASON: Sustained. Ask -- just ask  
17 your question a different way, Ms. Rice  
18 (sic).

19 MS. TAFF-RICE: Thank you. I'll move  
20 to another question.

21 Q Mr. Ray, are you aware that Dish  
22 believes that T-Mobile was intending to have  
23 a three-year customer migration period for  
24 CDMA?

25 A I can't answer that. I don't know  
26 what Dish believes. All I know is that Dish  
27 signed a contract between T-Mobile, Dish, and  
28 the Department of Justice, which outlined the

1 migration activity they would be responsible  
2 for and they were obligated to the Department  
3 of Justice and T-Mobile to meet, per the  
4 notice provisions of the agreement.

5           And we didn't even ask or try to  
6 enforce or provide the 6-month minimum. We a  
7 waited 6 months, post the completion of the  
8 deal, and then we provided a 15-month notice,  
9 not a 6-month notice. So I fail to  
10 understand why DISH -- who signed that  
11 agreement with full knowledge and full  
12 agreement -- why they would be surprised that  
13 the migration period was something less than  
14 the three-year period. That was never the  
15 intent and never the agreement.

16           MS. TAFF-RICE: Your Honor, I'm going  
17 to ask if you could help Mr. Ray with his  
18 answers to be a bit more responsive. Because  
19 I -- that's not the question I asked him.  
20 And we are short on time today.

21           So I'm going to ask the question  
22 again. Are you --

23           ALJ MASON: Part of the answer is in  
24 response to the answer to your question. I  
25 think it went beyond the scope of your  
26 question. But there was an answer to your  
27 question in there. So I think you should  
28 move on.

1 BY MS. TAFF-RICE:

2 Q Mr. Ray, are you aware that The  
3 Utility Reform Network is a prominent  
4 consumer group here in California?

5 A I'm sorry. I not sure I understood  
6 your question. The what group?

7 Q The Utility Reform Network.

8 A I'm sorry. I don't know what that  
9 is -- what -- what is that?

10 Q You have no recollection of them  
11 participating in the December 2019 hearing at  
12 the Commission?

13 A Not that I recall. I don't recall  
14 that name or that entity.

15 Q Okay. How about the Commission's  
16 Public Advocates Office, are you familiar  
17 with them?

18 A I believe so. I believe they --  
19 they asked questions in the, I think, first  
20 hearing, maybe the second too -- I think.  
21 Honestly, I'm not an expert on, you know, the  
22 entities that were asking questions during  
23 the Commission proceedings. I -- I provided  
24 witness testimony; and I provided the best  
25 and most-fulsome answers I could to all the  
26 questioning.

27 Q And, Mr. Ray, I'm not asking you to  
28 be an expert. I'm simply asking, are you

1 aware of who the Public Advocates Office is?

2 A Somewhat. I don't know a great  
3 deal about it, no.

4 Q Okay. Would you accept, subject to  
5 check, that the Public Advocates Office is  
6 what it sounds like?

7 It's an advocacy group within the  
8 Public Utilities Commission that looks out  
9 for customer welfare.

10 MR. GELFAND: Your Honor, I object.  
11 This is really a waste of the Commission's  
12 time and --

13 ALJ MASON: Please move on.

14 Actually, it's 3:00 o'clock. We're  
15 taking a break for 10 minutes. We're off the  
16 record.

17 (Recess taken.)

18 ALJ MASON: Okay. We are back on the  
19 record.

20 Ms. Taff-Rice, you may continue with  
21 your cross-examination.

22 MS. TAFF-RICE: Thank you, your Honor.

23 Q Just before the break, Mr. Ray, we  
24 were discussing a statement that the Public  
25 Advocates Office at the Public Utilities  
26 Commission made about the T-Mobile three-year  
27 customer migration period. I would like to  
28 turn your attention to what's been marked as

1 DISH Exhibit OCD-09, please. And when you  
2 get that in front of you, sir, it's on  
3 page 30.

4 MS. TOLLER: He's just pulling it up.

5 BY MS. TAFF-RICE:

6 Q Do you have that in front of you,  
7 sir?

8 A Yes. As an extract, I'm not  
9 familiar with the document.

10 Q I understand that. But, again,  
11 you're the only witness that T-Mobile has  
12 offered today. And so I'm going to ask your  
13 opinion on a statement that the Public  
14 Advocates Office has made. And you can tell  
15 me you understand it, or you can answer and  
16 give me your opinion about it.

17 Is that fair?

18 MR. GELFAND: Your Honor, it's not  
19 fair. And I know I'm objecting a lot. I  
20 gather from your Honor's rulings that this is  
21 a more liberal proceeding than maybe I'm  
22 accustomed to. But this is a document from  
23 an entirely different case. And he said he's  
24 not familiar with it. And he's going to be  
25 asked his opinion about it?

26 It just seems unfair, your Honor.

27 MR. MASON: I understand your  
28 objection. It's overruled. She can ask him

1 if he has an opinion. If he doesn't, he'll  
2 testify.

3 Let's go.

4 MS. TAFF-RICE: Thank you, your Honor.

5 Q So, Mr. Ray, on the bottom of page  
6 29, the Public Advocates Office is providing  
7 this statement in response to the potential  
8 merger between Verizon Wireless and Tracfone.  
9 And Public Advocates Office says:

10 This year, the three MNOs (sic),  
11 T-Mobile, AT&T, and Verizon, had  
12 recently announced that they would  
13 shut down their respective 2G and  
14 3G networks, upon which, customers  
15 of MVNOs riding on the networks  
16 are dependent. In addition, DISH  
17 recently filed a petition for  
18 modification on the decision for  
19 the T-Mobile/Sprint merger,  
20 complaining of T-Mobile's plans to  
21 shut down its 3G CDMA network,  
22 upon which its Boost customers are  
23 dependent. This was an abrupt  
24 change from T-Mobile's agreement  
25 to keep their network operational  
26 for Dish/Boost's prepaid customers  
27 for at least three years as part  
28 of the T-Mobile/Sprint merger.



1           Do you agree with that statement,  
2 Mr. Ray?

3           A     Absolutely not. I mean, to begin  
4 with, I'm going to repeat the fact that I've  
5 never seen this document before. I don't  
6 know when it's from.

7           I've gone back to the front page,  
8 this is a Tracfone-Verizon document. And  
9 there is commentary that you read to me, from  
10 an entity that I don't really know, stating  
11 that there was some -- there was an abrupt  
12 change from T-Mobile's agreement. Completely  
13 and utterly false. I hate to repeat myself  
14 again, but --

15          ALJ MASON: You don't have to. You  
16 said you don't agree with it. So let's move  
17 on to the next question.

18          THE WITNESS: Okay.

19          MS. TAFF-RICE: Thank you, your Honor.

20          Q     And, again, I'm just going to go  
21 back to the question I had about TURN,  
22 because you do recall them participating in  
23 the hearing, I think you've said. And this  
24 is --

25          A     I'm sorry, Ms. Taff-Rice --  
26                (Crosstalk.)

27          THE WITNESS: Who is TURN? That was a  
28 utilities thing you mentioned? Is that --

1 I'm sorry. I'm just trying to understand  
2 the --

3 (Crosstalk.)

4 ALJ MASON: Ms. Taff-Rice, ask your  
5 question again, please.

6 MS. TAFF-RICE: Yes. I was asking if  
7 Mr. Ray could please turn to exhibit OSCD-08  
8 marked by DISH.

9 Q Do you have that in front of you,  
10 sir?

11 A I have the first page, yes.

12 Q Could you please turn to page 2?

13 A Yes.

14 Q Are you there?

15 A Yes. Again, I'm sorry. I am not  
16 familiar with this document.

17 Q I understand. I'm not going to ask  
18 you whether you're familiar with the  
19 document. I'm going to read a statement  
20 here, and then I'm going to ask you if you  
21 agree or disagree with it.

22 Are you ready?

23 A Sure.

24 Q This statement is in TURN's --  
25 actually, it's a document that TURN filed in  
26 support of DISH's petition for modification  
27 in this proceeding. And on page 2, they  
28 state:

1 T-Mobile's decision to prematurely  
2 sunset its CDMA network  
3 compromises DISH's ability to  
4 adequately serve these customers.  
5 DISH rightly points out that  
6 Verizon recently extended its CDMA  
7 sunset date for the third time.  
8 In testimony, T-Mobile's President  
9 of Technology...

10 That would be you, Mr. Ray;  
11 correct?

12 A I think we've established that, Ms.  
13 Taff-Rice.

14 Q Thank you.

15 (Reading from document.)

16 ...indicated that the three-year  
17 period could be extended, if  
18 necessary, and made no mention of  
19 reducing the timeframe for  
20 migration. Per T-Mobile's  
21 representations to the Commission,  
22 the three-year transition was a  
23 floor not a ceiling.

24 Did I read that correctly?

25 A I believe you did.

26 Q And is it fair to say that TURN has  
27 the belief that T-Mobile agreed to a  
28 three-year CDMA customer migration period?

1 MR. GELFAND: Same objection as before,  
2 your Honor.

3 ALJ MASON: I'm sorry. I will sustain  
4 the objection.

5 BY MS. TAFF-RICE:

6 Q So, Mr. Ray, just to summarize what  
7 we've been talking about for the last few  
8 minutes, I asked the question and it was not  
9 answered. And it's a straightforward  
10 question, yes or no.

11 Given all of the repeated  
12 references to a three-year customer migration  
13 period, both in your pre-filed testimony in  
14 November and your hearing testimony in  
15 December of 2019, do you think it was  
16 unreasonable for the Commission to believe  
17 that T-Mobile indicated in 2019 that service  
18 would be maintained for Boost customers until  
19 migration was completed during a migration  
20 period of 2020 to 2023?

21 MR. GELFAND: Same objection as before,  
22 your Honor.

23 ALJ MASON: I'm sorry. I keep muting  
24 myself. Overruled.

25 You can answer the question if you  
26 know, Mr. Ray.

27 THE WITNESS: Yes. So, I don't think  
28 it's appropriate for me to provide an opinion

1 as to what the Commission believes is  
2 reasonable or unreasonable. That's the  
3 purpose of the hearing here today.

4 In terms of the testimony and the  
5 evidence that's on the record here, it is  
6 very clear that the only term ever agreed to  
7 between the respective parties, DISH and  
8 T-Mobile and the Department of Justice, was  
9 that the CDMA network would be shut down in  
10 conjunction and in accordance with the  
11 specified notice periods. We provided  
12 15-months' notice, 6 months post the close of  
13 the transaction. That is clear.

14 There are three-year statements in  
15 the record regarding migration. They were  
16 always in the context of up to three years  
17 and a period within which we would conduct  
18 the migration. And there is a volume of  
19 other evidence -- the MNSA itself, that  
20 clearly outlines what are the contractual  
21 commitments and the contractual obligations  
22 of DISH with relation to this matter in front  
23 of, not just T-Mobile, but the Department of  
24 Justice. And that's the requirement that we  
25 have highlighted in my testimony today. And  
26 that is what governs you.

27 BY MS. TAFF-RICE:

28 Q Is it fair to say, Mr. Ray, that

1 T-Mobile views the Order to Show Cause issued  
2 by the Commission as meritless and without  
3 basis in fact?

4 A I'm sorry. Could you repeat the  
5 question, Ms. Taff-Rice?

6 Q Certainly.

7 Is it your view that T-Mobile  
8 believes the Order to Show Cause issued in  
9 this proceeding is meritless and without  
10 basis in fact?

11 A I don't know how to answer that  
12 question. It's a legal construct.

13 Clearly, the OSC points to our  
14 intent to mislead the Commission. And I  
15 have testified multiple times today that was  
16 never, ever T-Mobile's intent, or that of  
17 mine, in written or verbal testimony.  
18 Absolutely not the case.

19 Q Mr. Ray, in preparation for your  
20 testimony today, did you try to familiarize  
21 yourself with what T-Mobile has announced  
22 publicly is its view of this Order to Show  
23 Cause?

24 A Publicly, did you say?

25 Q Yes, announced publicly.

26 A I'm not sure what you mean by that.

27 Q Well, you understand you're the  
28 only witness for T-Mobile today; correct?

1           A     I believe so, yes.

2           Q     And you understand that you are  
3     testifying in a hearing related to an Order  
4     to Show Cause that the Commission issued  
5     against T-Mobile?

6           A     Yes. I think we established that.

7           Q     So my question was:

8                 Before you appeared as T-Mobile's  
9     only witness today, did you make any effort  
10    to familiarize yourself with T-Mobile's  
11    public statements about the merit, or the  
12    lack thereof, of this Order to Show Cause?

13          A     I'm not sure what you mean by "The  
14    public statements." Therefore, I don't know  
15    whether I familiarized myself with them or  
16    not.

17          Q     Well, I can help with that.  
18    There's an exhibit that DISH has marked as  
19    OSCD-10. And this is a press statement that  
20    in- -- incorporates a statement that was  
21    issued by T-Mobile as a press statement.

22                 Would you please take a look that?

23          A     It's up on the screen.

24          Q     And if you go to the second page of  
25    that, toward the bottom, it says:

26                 T-Mobile issued the following  
27    statement, quote:

28                 We absolutely disagree with the

1 ALJ action which we believe is  
2 meritless and without basis in  
3 fact.

4 Now, my question is: Do you agree  
5 with that, Mr. Ray?

6 Do you think this Order to Show  
7 Cause is baseless -- or meritless and without  
8 basis in fact?

9 A Well, I didn't write that  
10 statement.

11 Q Do you disagree with it?

12 A As I've outlined today multiple  
13 times in my testimony, I do not believe that  
14 I or T-Mobile attempted to mislead the  
15 Commission in relation to these matters.  
16 Absolutely did not. Was never our intent.  
17 And we did not do so.

18 Q So you believe the Order to Show  
19 Cause is meritless and without basis in fact?

20 A I didn't use those words. And I  
21 can't really comment on them.

22 Q Are you aware that the Order to  
23 Show Cause was not just issued by an  
24 Administrative Law Judge, it's actually  
25 signed by Commissioner Rechtschaffen?

26 A I don't know that, no.

27 Q Would that change your opinion of  
28 whether the Order to Show Cause has merit or



1 fact base?

2 A Well, I just said I couldn't really  
3 comment on that. All I can repeat is that,  
4 you know, T-Mobile has been forthright and  
5 fulsome in its materials and evidence and  
6 testimony regarding this combination of  
7 T-Mobile and Sprint.

8 Q All right. Well, let me ask you  
9 about a specific statement in the Order to  
10 Show Cause. This is at page 4 of the Order  
11 to Show Cause, which has been marked as  
12 Exhibit 1 by T-Mobile, OSC T-Mobile-01.

13 Do you have this in front of you,  
14 Mr. Ray?

15 A Yes, I do. I think it's not on my  
16 monitor yet. But we're trying to pull it up.

17 Q Are you ready now?

18 A I believe so, yes. Yeah.

19 Q And at page 4, the Order to Show  
20 Cause states, quote:

21 In D.20-04-008 --

22 Do you understand that that's the  
23 Commission's order that approved the  
24 T-Mobile/Sprint merger?

25 A I'm not familiar with that term.

26 Q Will you accept that subject to  
27 check, sir?

28 A Will I accept what? Sorry.

1           Q    Will you accept, subject to check,  
2   that the decision that the Commission order  
3   -- Commission issued approving the  
4   T-Mobile/Sprint merger is Decision 20-04-008?

5           A    Happy to confirm that later, or  
6   something, if that's -- I don't know. I  
7   don't know that reference. But --

8           Q    Okay.

9           A    -- if you tell me that was the  
10   decision, then I have no reason to believe it  
11   was not. But I can't confirm it.

12          Q    Okay. So the Order to Show Cause  
13   states, quote:

14                   In D.20-04-008, the Commission  
15                   noted that it could rely on  
16                   obligations imposed on T-Mobile  
17                   and DISH in agreements with the  
18                   FCC and DOJ. Moreover,  
19                   D.20-04-008 stated in Ordering  
20                   Paragraph 6 that, quote, the  
21                   legacy Sprint and T-Mobile  
22                   customer experience shall not be  
23                   degraded during the customer  
24                   migration period (2020 to 2023).

25                   Did I read that correctly, sir?

26          A    I believe so.

27          Q    And this morning, when you were  
28   having a colloquy with Mr. Gelfand, you

1   stated under oath that the legacy network  
2   equates -- or I believe your word was  
3   "synonymous with" CDMA.

4               Do you recall that testimony, sir?

5               MR. GELFAND: That misstates the  
6   testimony. And it was a particular question.  
7   And it wasn't "synonymous." It was --

8               ALJ MASON: All right. The testimony  
9   from this morning is going to speak for  
10   itself. So ask your question a different  
11   way, Ms. Rice (sic).

12              MS. TAFF-RICE: All right. Thank you.  
13   I'll just move on.

14              Q   Mr. Ray, the Order to Show Cause  
15   also notes that a shutdown of the CDMA  
16   network on January 1st of 2022, quote:

17                    Could harm Boost pre-paid  
18                    customers who are frequently  
19                    low-income, rural, and transient.

20              Do you see that statement in the  
21   Order to Show Cause?

22              MR. GELFAND: Wait. Where is it?  
23                    (Crosstalk.)

24                    (Reporter clarification.)

25              ALJ MASON: All right. Thank you.

26              Ms. Taff-Rice, what page were you  
27   just quoting from?

28              MS. TAFF-RICE: This is from the Order

1 to Show Cause at page -- 7.

2 ALJ MASON: Okay. Why don't you reread  
3 the sentence from page 7 that you want Mr.  
4 Ray to focus on.

5 BY MS. TAFF-RICE:

6 Q It -- the relevant portion starts:  
7 Furthermore, impacts in service  
8 could harm Boost pre-paid  
9 customers who are frequently  
10 low-income, rural, and transient.

11 A I'm sorry. I'm trying to find  
12 that.

13 Where is it on page 7?

14 Q It is associated with Footnote  
15 Number 22. If you want to look at the little  
16 22, that might give you a guidepost.

17 ALJ MASON: It's actually the last  
18 sentence before the first paragraph,  
19 beginning with "The Commission."

20 THE WITNESS: Okay. Thank you, your  
21 Honor. I found it.

22 BY MS. TAFF-RICE:

23 Q Mr. Ray, you're familiar with the  
24 Boost customer base, aren't you?

25 A I'm sorry. Ms. Taff-Rice, that  
26 broke up.

27 Q Do you agree with the Order to Show  
28 Cause that Boost pre-paid customers are

1 frequently low-income, rural, and transient?

2 A I think you would have to ask DISH,  
3 who manages those customers, for a stronger  
4 opinion on that than mine, at this point in  
5 time. They are certainly pre-paid customers.

6 Q All right.

7 And if T-Mobile shuts down the CDMA  
8 network on January 1st of 2022, a CDMA  
9 subscriber without a compatible T-Mobile  
10 device, or SIM card, will no longer be able  
11 the access their wireless service when they  
12 wake up on New Year's Day; isn't that  
13 correct?

14 A Is that written here somewhere?

15 Q No. That's my question to you.

16 A Oh, I'm sorry. I was trying to --  
17 so sorry.

18 Could you repeat the question?

19 Q Sure.

20 A I thought we were still reading  
21 from the document. I'm sorry.

22 Q No. I'm asking questions about the  
23 document now.

24 So, if T-Mobile shuts down the CDMA  
25 network on January 1st of 2022, a CDMA  
26 subscriber without a compatible T-Mobile  
27 network device, or SIM card, they will no  
28 longer be able to access their wireless

1 service when they wake on New Year's Day.  
2 And I asked you if that was an accurate  
3 statement.

4 A Well, it's certainly not the plan  
5 of T-Mobile for its non-divested customers  
6 who are using CDMA. Our plan is to ensure  
7 they have a fully-compatible device with the  
8 T-Mobile network before that date. And the  
9 commitment and obligation that DISH made for  
10 the Boost customers was that it would make  
11 sure that didn't happen through ensuring it  
12 made the appropriate and necessary actions  
13 and investments, whereby the Boost customer  
14 base would be migrated off of non-compatible  
15 handsets.

16 So for the Boost base, in response  
17 to your question, that is DISH's obligation.  
18 And if DISH fails to meet that obligation,  
19 then, potentially, there's a scenario where  
20 one of their customers could be unavailable  
21 or have no service available -- I'm sorry --  
22 on that date that you've described.

23 Q Okay. Thank you.

24 And on that same date, on New  
25 Year's Day of 2022, if there happens to be a  
26 CDMA customer that doesn't have a compatible  
27 T-Mobile network device, or SIM card, they  
28 don't have the ability to make 911 calls,

1 depending on their location; correct?

2           A     Well, that, again, will be fully  
3 dependent on DISH. DISH's obligation --  
4 sorry to repeat myself again. But DISH's  
5 obligation is to ensure -- I repeat "ensure"  
6 -- that does not happen. That is the  
7 commitment that they made to the Department  
8 of Justice, actually, that they would fully  
9 meet the shutdown and migration obligations  
10 in accordance with the notice periods of the  
11 MNSA.

12                     So provided that DISH does its  
13 job -- which, in this case, is only to  
14 provide customers with a compatible  
15 handset -- on the T-Mobile side, we have to  
16 do all the network work. We're still running  
17 the TSA. All DISH has to do is to provide,  
18 in the majority of cases, per my earlier  
19 testimony, a SIM card; in some smaller volume  
20 -- much smaller volume -- of cases, provide a  
21 handset.

22                     If they meet those obligations, the  
23 outlined circumstances that you described  
24 will simply not happen. And that has always,  
25 always been the plan.

26           ALJ MASON: I'm going to do a time  
27 check here.

28                     Ms. Taff-Rice, how much longer do

1 you have for your cross? Because I want --  
2 Judge Bemederfer has a few questions. I  
3 want to make sure Commissioner Rechtschaffen  
4 can ask a few questions. I want to make sure  
5 there's time for you to call your witness.  
6 So I'm just -- we're at 3:37. And I'm trying  
7 to make sure we save enough time for  
8 everything.

9 MS. TAFF-RICE: Thank you, your Honor.  
10 I believe I can complete my cross at -- at,  
11 roughly, around 4:00 o'clock.

12 ALJ MASON: All right. Thank you.

13 BY MS. TAFF-RICE:

14 Q So, Mr. Ray, the question I  
15 actually asked you was:

16 If there happens to be a customer,  
17 CDMA customer, that does not yet have a  
18 compatible handset, or SIM card, that would  
19 allow them to get customer -- sorry --  
20 service on the New T-Mobile network, then on  
21 January 1st of 2022, they will no longer have  
22 the ability to make 911 calls, depending on  
23 their location; isn't that correct?

24 A Yes; if, and only if, DISH allows  
25 that to happen. DISH's responsibility is  
26 very, very clear in terms of their  
27 commitments and obligations in front of the  
28 Department of Justice to make sure that that



1 event does not happen.

2 Q Sir, would you please get Exhibit  
3 Number OSCD-11, and take a look that?

4 Do you have that in front you, sir?

5 A It's coming up.

6 Q Do you have it in front of you now,  
7 sir?

8 A I do.

9 Q And I'll represent to you that this  
10 is simply a printout of a page on T-Mobile's  
11 website. And the heading on this portion of  
12 the website is, "T-Mobile Network Evolution."  
13 And about two thirds of the way down, there's  
14 a section that says, "Have questions?," and a  
15 question mark.

16 And this is a place, I take it,  
17 where customers can come get information  
18 about the CDMA migration period?

19 A Let me read the document, if that's  
20 okay?

21 Q Well, let me read one section to  
22 you. And then if you feel you need to add  
23 more detail to it, that would be fine. The  
24 question I would like to draw your attention  
25 to is the question that says:

26 What does the Sprint 3G CDMA  
27 network retirement mean to me?

28 The answer is:

1           On January 1st of 2022, Sprint's  
2           older 3G (CDMA) network will be  
3           retired. If you are still using a  
4           device that is dependent on  
5           Sprint's 3G (CDMA) network or that  
6           does not support VoLTE, you will  
7           need the upgrade to a more modern  
8           device no later than the end of  
9           2021 to continue getting service,  
10          including the ability to make 911  
11          calls, depending on your location.

12           Do you agree with that statement,  
13   sir?

14           A    I see it. Yes.

15           Q    Now, do you agree with it?

16                   Do you think this is a truthful  
17   statement?

18           A    The CDMA network is being shut down  
19   on 12/31/21. So it's correct that if you  
20   don't have an upgraded handset at that point  
21   in time, we would ask you to make sure you go  
22   to one of our stores or one of our many  
23   outlets -- this is T-Mobile talking -- and  
24   secure a handset. Our plan, and the plan  
25   that we are executing on, will drive this  
26   potentialized (sic) outcome to an absolute  
27   minimum. That is our intent and our plan.  
28   Unfortunately, it seems to be unlike that of

1 DISH for their Boost customers.

2 Q Well, Mr. Ray, this statement that  
3 I just read doesn't say anything about Boost.  
4 This is actually on T-Mobile's own network.  
5 And, presumably, this is a question that a  
6 T-Mobile customer might have. It's a  
7 T-Mobile CDMA customer.

8 A And I answered according -- and I  
9 answered accordingly for you.

10 Q Okay. So has T-Mobile done any  
11 kind of analysis as to how many customers --  
12 CDMA customers might actually not be able to  
13 make 911 calls on January 1st of 2022?

14 A Well, we continue to move towards  
15 our plan for making sure that that number of  
16 customers is de minimus. Unfortunately --  
17 right? -- it's impossible. We do a host of  
18 things to reach out to our customers. And  
19 Boost has the same opportunity -- or DISH  
20 has -- for their Boost customers.

21 You could argue, in terms of  
22 pre-paid customer access, because they re-up  
23 their service, they visit stores so  
24 frequently, et cetera, to pay their bills,  
25 that the opportunity to access those  
26 customers is even greater. So we work very  
27 hard to make sure that this outcome doesn't  
28 happen.

1           Now, with all of the outreach that  
2 we manage -- and I'm assuming and hoping that  
3 DISH and Boost are doing the same thing. We  
4 provided a complete playbook of how we've  
5 done this in the past. This is very normal,  
6 common activity within the wireless industry  
7 to migrate from one technology to the next  
8 and, ultimately, to retire the older  
9 technology.

10           Provided that is done, then the  
11 number of customers that will be impacted,  
12 per the statement, will be incredibly small.  
13 There are going to be some customers that  
14 will never respond to outreach. And we have  
15 a whole host of mechanisms whereby we can  
16 provide them with information and detailed  
17 information as to how they can secure a  
18 compatible handset so that this situation is  
19 avoided. And we're providing free handsets  
20 in this space for our customers.

21           We did this at great success with  
22 CDMA customers from MetroPCS, very similar  
23 volume. We were able to complete the  
24 migration in an accelerated -- a very quick  
25 period of time, less than two years. And the  
26 number of customers that were impacted,  
27 whereby they weren't able to make calls, was  
28 de minimus.

1           So, we know how to do this. We  
2     have planned how to do this. We're executing  
3     on the plan. We have to make these  
4     statements so that folks understand that they  
5     need to go and change their handset, and that  
6     we'll provide them a free handset to do so. ]

7           Q     The effort you've just described  
8     that T-Mobile is going through to minimize  
9     that there be a de minimis number of  
10    customers that will not be able to make a 911  
11    call on January 1st of 2022.

12           My question actually was if you  
13    have knowledge of how many customers there  
14    are going to be in that situation.

15           A     Well, clearly, we don't want any  
16    customer not being able to make a 911 call,  
17    but there are a host of alternatives that  
18    will be made available to them, including the  
19    opportunity to secure an upgraded handset  
20    from T-Mobile and I hope a compatible handset  
21    from T-Mobile --

22                   (Crosstalk.)

23           THE WITNESS: What was the second part  
24    of your question?

25    BY MS. TAFF-RICE:

26           Q     The question, sir, was if you have  
27    any analysis on how many customers are going  
28    to be in this situation that on January 1st

1 of 2022 that will no longer be able to make a  
2 911 call?

3 A I don't have that number. I  
4 certainly don't have it for California, but  
5 our plan is to ensure that that number is  
6 retained to an absolute minimum, and we have  
7 a strong track record of --

8 ALJ MASON: Let's move on.

9 MS. TAFF-RICE: Thank you, your Honor.

10 Q Is it correct that T-Mobile first  
11 notified DISH on October 2nd of 2020 that it  
12 would shut down its entire CDMA network on or  
13 around January 1st of 2022.

14 A I believe so. I believe that's the  
15 date.

16 Q And sitting here today is it still  
17 T-Mobile's intention to shut down the CDMA  
18 network nationwide on January 1st of 2022?

19 A That's the plan. Yes.

20 Q And that's, approximately, 104 days  
21 from now?

22 A I haven't done that math, but I  
23 think we all know when the end of the year  
24 is.

25 Q Well, you're able to do math in  
26 your head with Mr. Gelfand this morning.

27 A I've always been told, Don't do  
28 math in public, so...

1           ALJ MASON: Let's move on, Ms. Rice.  
2 We know what the date is.

3 BY MS. TAFF-RICE:

4           Q Do you understand that after DISH  
5 received the shutdown notice that it filed a  
6 petition for modification asking the  
7 Commission to require T-Mobile to live up to  
8 its commitment, as we saw it, to a three-year  
9 CDMA migration timeline?

10          A Well, clearly, there was no  
11 commitment provided by T-Mobile, but DISH did  
12 file a request for modification, whatever the  
13 correct legal terms are, for -- what -- six  
14 months post the notice-period provision?

15                 So we were six months post-April in  
16 October when we provided DISH the 15-month  
17 notice period, and I believe DISH raised an  
18 issue about that some six months later if I  
19 have it correct.

20          Q Okay. So when DISH did file that  
21 petition for modification subsequently  
22 T-Mobile filed a response; correct?

23          A I'm not sure. You mean to the  
24 Commission or, again, I'm not the lawyer.

25          Q T-Mobile filed a response to DISH's  
26 petition for modification at --

27          A I actually don't know that. I'd  
28 assume we did, but I don't know that.

1           Q    Well, again, because you're  
2 T-Mobile's only witness, I'm going to ask you  
3 to take a look at what's been marked as  
4 Exhibit OSCD-12, and this is a copy of the  
5 response that T-Mobile filed to DISH's  
6 petition for modification.

7                   Do you have that in front of you,  
8 sir?

9           A    I do.

10          Q    The part I'm interested in starts  
11 at the bottom of page 21 and it continues to  
12 page 22. What it says is:

13                   Contrary to DISH's claims,  
14                   delaying the CDMA sunset would  
15                   have a significant effect on  
16                   T-Mobile's ability to capture  
17                   merger synergies required to fund  
18                   its 5G network and refarm spectrum  
19                   required for its plan to deliver  
20                   high quality 5G services in  
21                   California and meet related  
22                   conditions imposed by this  
23                   Commission.

24                   Do you agree with that statement,  
25 sir?

26          A    I'm sorry. What did you ask me  
27 about that statement?

28          Q    Do you agree with that statement?



1           A     Let me just read it again to  
2 myself.

3           Q     Sure.

4           A     Yes.

5           Q     And further down on that page,  
6 there's an actual quantification of what  
7 merger synergy means. It means saving money;  
8 doesn't it?

9           A     Somewhat, yes. I mean, there's a  
10 whole host of synergies and benefits. Some  
11 of them are financial. Some of them are  
12 consumer benefits. Some of them are employee  
13 benefits, et cetera. Financial synergies is  
14 one example, sure.

15          Q     I'm not going to use the number  
16 because we are in the public session today,  
17 and I'd prefer not to go back into the  
18 confidential session, but if you look at the  
19 bottom of the page, it says:

20                   T-Mobile's current estimate is  
21                   that a delay in the CDMA sunset to  
22                   July of 2023 would cost the  
23                   company around -- this number has  
24                   been redacted -- in lost merger  
25                   synergies nationwide that would  
26                   have supported 5G deployment.

27                   (Reporter clarification.)

28 BY MS. TAFF-RICE:

1           Q     The question was whether or not  
2 Mr. Ray believes that's a correct statement.

3           MR. GELFAND: I'm sorry. Is what a  
4 correct statement?

5 BY MS. TAFF-RICE:

6           Q     That T-Mobile estimates that a  
7 delay in the CDMA sunset to July 2023 will  
8 cost the company a certain number that we're  
9 not going to say out loud in the public  
10 portion of the hearing in lost merger  
11 synergies nationwide that would have  
12 supported 5G deployment.

13           MR. GELFAND: I'm sorry, your Honor.  
14 I'm really not trying to be difficult.

15                     Are you asking him to look at the  
16 confidential number and tell you if he agrees  
17 with the confidential number or just concept?

18           ALJ MASON: I think it's just the  
19 public portion that Ms. Taff-Rice read.  
20 She's asking if he agrees with that  
21 statement?

22           MR. GELFAND: Very well. Thank you,  
23 your Honor.

24           THE WITNESS: So if I could answer this  
25 way, that there will be -- if there is a  
26 delay in the CDMA Sunset to July of 2023,  
27 there will be material lost synergies and  
28 there will be delays in terms of our ability

1 to meet the plan that we put in front of this  
2 Commission and the FCC and the Department of  
3 Justice to roll out 5G at the pace and in the  
4 manner that we've outlined and many of those  
5 benefits would be lost.

6 Q And, again, the benefit is at least  
7 in part financial. T-Mobile will achieve  
8 cost savings by shutting down the CDMA  
9 network prior to 2023.

10 A Well, I believe there's a dollar  
11 number that's inserted here, but, obviously,  
12 there's -- I mentioned earlier there are huge  
13 spectral efficiencies. You can tie and  
14 translate these things to financial map, of  
15 course. But I'm the network guy, and I'm  
16 most interested in making sure that we are  
17 able to refarm the spectrum and put that to  
18 great use so we can further advance  
19 customers' experiences in California in line  
20 of what we said to the Commission and the FCC  
21 and the DOJ.

22 We also want to free up space on  
23 towers and remove legacy and old equipment so  
24 that affords us critical space to conduct and  
25 upgrade modernization and placement of 5G  
26 equipment, and it also, as I mentioned much  
27 earlier in my testimony today, allows us and  
28 affords us to offer sites, towers and cell

1 sites, to DISH, as part of the MNSA and the  
2 agreement with the Department of Justice.

3 This was a key point of discussion  
4 with the Commission in the December hearing  
5 so that they can meet their obligations  
6 whenever this happens to build their own  
7 network. So all of those benefits and  
8 opportunities are there to be had.

9 Q So if T-Mobile shuts down the CDMA  
10 network on January 1, 2022, T-Mobile will  
11 remove the 800 MHz equipment on its towers;  
12 right?

13 A Some of it. It depends on the  
14 location. It depends on the market, but we  
15 can't do it as I mentioned earlier on on that  
16 very date. It takes time to remove equipment  
17 and decommission and negotiate and all those  
18 things, but the plan is ultimately to remove  
19 the 800 MHz equipment.

20 It's also to remove the legacy PCS  
21 equipment on some sites, as we outlined  
22 earlier, serving CDMA and to free up that  
23 tower space and ensure -- one of the critical  
24 aspects here -- and I mentioned at the very  
25 beginning of my testimony that I have many  
26 years of actually building networks in  
27 California.

28 It's very difficult to actually

1 place and secure approvals for building these  
2 facilities. It can take many, many months,  
3 if not years, in some cases.

4 And so one of the key benefits here  
5 with the removal of the equipment is that we  
6 can place newer generation 4G and 5G antennas  
7 and radios on what is very scarce space on  
8 towers and cell sites.

9 Q Once you remove the 800 MHz  
10 equipment from towers, there won't be any  
11 traffic on the 800 MHz frequency; right?

12 A If we've removed the 800 MHz  
13 equipment at that time, then we won't have  
14 800 MHz spectrum in use.

15 Q That wasn't quite my question. You  
16 said you get cost savings, for example, by  
17 being able to remove 800 MHz equipment from  
18 the towers; right?

19 A Correct.

20 Q And if you remove 800 MHz equipment  
21 from the tower, that doesn't see any traffic  
22 flow on the frequency; right?

23 A If we've removed equipment from a  
24 specific cell site, then there won't be 800  
25 MHz traffic of any description on that cell  
26 site. If we've taken down the antennas and  
27 the radios that transmit on the 800 MHz  
28 frequency, then, no. There would be no

1 wireless traffic on that specific site.

2 Q But I believe the order to show  
3 cause mentions -- and I'm sure you're  
4 aware -- that T-Mobile has announced publicly  
5 that it's going to keep LTE traffic on the  
6 800 MHz spectrum until June 30th, 2022; isn't  
7 that correct?

8 A That's what we've said. We've  
9 communicated that we'd shut down some of that  
10 traffic. Yes.

11 Q So if the LTE equipment remains on  
12 the tower, you won't be able to remove the  
13 radios -- you won't be able to remove the  
14 800 MHz equipment off the tower completely  
15 until June 30, 2022; isn't that right?

16 A Well, it doesn't happen in an  
17 absolute fashion. This is site-specific and  
18 site dependent. So you can still remove  
19 certain sites. You can remove the equipment.  
20 You can still have LTE traffic on the 800 MHz  
21 layer, but, obviously, in LTE we have a  
22 wealth of spectrum sources and opportunities  
23 to serve the customers. So it doesn't happen  
24 in an absolute fashion that you're trying to  
25 describe.

26 Q Well, isn't it correct, Mr. Ray,  
27 that the 800 MHz equipment that I'm  
28 referencing there, is the CDMA radio head;

1 right?

2 A Yes.

3 Q And there's LTE radio heads?

4 A They are separate. They are  
5 separate, I believe. Separate from radio  
6 boxes, yes.

7 Q But they often are housed in one  
8 enclosure?

9 A I don't believe that's the case.

10 Q They use a common antenna?

11 A The antenna may be common, but the  
12 equipment may be separated out. It may be in  
13 the same enclosure; it might not. It depends  
14 on the timing, the upgrades Sprint provided.  
15 I'm sorry. There are thousand of sites in  
16 California alone, and I don't know the  
17 configuration and makeup of every one of  
18 them.

19 ALJ MASON: We're coming up on 4:00, so  
20 if you will wrap-up, please.

21 MS. TAFF-RICE: I will do that, your  
22 Honor. Thank you.

23 Q So just to be clear, T-Mobile is  
24 going to shut down the CDMA network on  
25 January 1st, 2022, but keep the LTE network  
26 up until January 30th of 2022; correct?

27 A I was saying we will shut down --  
28 what was the last date you provided?

1           Q     June 30th of 2022 for the LTE  
2 shutdown.

3           A     That's the point in time in which  
4 we intend to shut down the CDMA network  
5 that's serving -- sorry. To shut down LTE on  
6 800 MHz.

7           Q     You just testified that there is  
8 sometimes the use of a common antenna;  
9 sometimes there's -- two radio heads are in a  
10 common housing. You can't actually remove  
11 the 800 MHz until June 30th of 2022 when the  
12 LTE network is shut down.

13          A     No. That wasn't my testimony. I  
14 said that it's not an absolute decision or  
15 matrix. There are many sites where we can  
16 remove 800 MHz equipment, but still provide  
17 the necessary 800 LTE services that we're  
18 talking about.

19                 We have a wealth of spectrum  
20 sources to provide LTE service. So not every  
21 site is going to go through the same measure  
22 during that period. So LTE can be supported  
23 on multiple sites. It's not an absolute  
24 decision or way we approach the activity.

25          Q     Let me try to clarify the question  
26 because I think it must not have been clear  
27 enough. You testified that CDMA radio heads  
28 and LTE radio heads are on the same 800 MHz



1 tower in a common closure often; correct?

2 A Sometimes. I said sometimes and  
3 sometimes they're not.

4 Q So T-Mobile intends to shut down  
5 the CDMA radio head on January 1st of 2022;  
6 right?

7 A Correct.

8 Q But T-Mobile is going to keep the  
9 LTE radio head operational until June 30th of  
10 2022; correct?

11 A On some sites. I said five times  
12 now that it's not an absolute decision. In  
13 some locations, we will. In some locations,  
14 we won't.

15 Q So for those locations where  
16 T-Mobile intends to keep the LTE radio head  
17 operational until June 30th of 2022, you  
18 can't remove all of the 800 MHz equipment  
19 from that tower; right?

20 A No, but you can remove the CDMA  
21 radio head, and there's a lot of locations  
22 where we don't have to keep the 800 MHz LTE  
23 radio on air.

24 ALJ MASON: All right. At this point,  
25 I'll give Commissioner Rechtschaffen an  
26 opportunity to ask any questions for Mr. Ray,  
27 and Judge Bemederfer to ask any questions  
28 and then I'll have an opportunity for

1 Ms. Taff-Rice.

2 Commissioner Rechtschaffen, do you  
3 have any questions for Mr. Ray?

4 EXAMINATION

5 BY COMMISSIONER RECHTSCHAFFEN:

6 Q Thank you, Judge Mason.

7 Good afternoon, Mr. Ray. I want to  
8 ask you about some of the statements  
9 regarding the impact of the merger on CDMA  
10 customers, and in particular there was a lot  
11 of discussion earlier about the statements  
12 from T-Mobile that it would cooperate with  
13 DISH to ensure migration is successful and  
14 that customers did not have a degraded  
15 experience. That's the frame I wanted to ask  
16 you about.

17 You testified quite a bit that you  
18 can't control what DISH does or would do;  
19 right?

20 A Correct, Commissioner. DISH has to  
21 manage their own customers, you know,  
22 appropriately and in alignment with the  
23 obligations that we all signed up for.

24 Q And I think you said at some point  
25 that or it's apparent in the record that  
26 there were no agreements required to migrate  
27 customers in any given time period; is that  
28 right?

1           A     No. I said the agreement was that  
2 customers would be migrated within the notice  
3 periods that were agreed to, and those notice  
4 periods equated to shutdown of service and  
5 the obligations of DISH to migrate their  
6 customers within those time frames was  
7 clearly expressed, stated, and agreed to with  
8 all parties within the agreement within the  
9 Department of Justice.

10           Q     Thank you. I understand that.  
11 There's nothing more specific than that.  
12 That's the gist of your testimony.

13           A     That's the only place where there  
14 was an agreement on those time frames,  
15 Commissioner.

16           Q     Okay. Did you know how long the  
17 migration would take when you submitted your  
18 testimony?

19           A     Well, we had a lot of experience  
20 from the work we've done recently with Metro  
21 PCS and we knew this migration could be  
22 conducted, you know, in a reasonable time  
23 frame. We were hoping well within a  
24 three-year period, hopefully within a  
25 two-year period, and DISH was hopeful of the  
26 same thing, Commissioner.

27                     There were a lot of benefits here.  
28 Nobody wanted to strand these customers on,

1 you know, low quality, poor quality legacy 3G  
2 services, and, you know, the shutdown of  
3 CDMA, as I referenced earlier in my  
4 testimony, was going to open up cell sites to  
5 DISH, which was an extensive agreement with  
6 DISH and T-Mobile and the Department of  
7 Justice. So DISH would be able to leverage  
8 those facilities and advance their field of  
9 the network.

10 So it was always discussed in, you  
11 know, this was going to happen on, you know,  
12 a reasonably accelerated time frame.  
13 Everybody knew what they needed to go do, and  
14 we had a lot of experience doing it.

15 Q Did you ever identify in the  
16 hearings that a potential result of the  
17 divestiture was that T-Mobile could shut down  
18 the CDMA network while DISH customers were  
19 still using it?

20 A I don't believe we ever really  
21 discussed that topic, Commissioner, directly.

22 Obviously, as I tried to relate my  
23 testimony, that there's always the  
24 circumstance where some -- you know, a very  
25 small number of customers may get  
26 disconnected when there's a legacy network  
27 shut down.

28 But that's what -- that's what this

1 industry does. That's what \*telcos do.  
2 That's what many companies do. You have to  
3 retire technology. You do everything you can  
4 to reach out to the customers, assuming  
5 whatever the technology is that you're  
6 providing, and ensure that before you retire,  
7 you do everything you can to reach them and  
8 provide them with new and compatible  
9 equipment. And this is no different.

10 So it's not reasonable to believe  
11 there's an absolute kind of binary solution  
12 here. There is always going to be a  
13 situation. You work very, very hard. We  
14 provide free handsets, subsidized rates, and  
15 major outreach, and we know how to do this,  
16 and we've done it before, Commissioner.

17 So, I mean, we know how to make  
18 this happen, and provided that you do the  
19 necessary work. This is the really important  
20 piece. And we're doing it at T-Mobile.

21 And I'm troubled that DISH is not  
22 doing the required work, and if they would do  
23 the required work, then we wouldn't be stuck  
24 here talking about this and these potential  
25 scenarios to the end of this year.

26 Q I appreciate that, and I appreciate  
27 what you said about lagging or small number  
28 of customers. What I was really getting at

1 is did you ever flag for the Commission that  
2 there could be a substantial number of CDMA  
3 customers who were left on the network when  
4 the transition was made and T-Mobile was  
5 shutting down the CDMA network?

6 A Commissioner, how could we have  
7 done that? That was never the plan from both  
8 parties. The intent was to decommission CDMA  
9 within these notice periods.

10 Everybody had locked hands with the  
11 Department of Justice, and at that time how  
12 would it have been possible for me or anybody  
13 else to project that this issue would be  
14 there, whereby DISH is saying that -- you  
15 know, that DISH is not doing the job that  
16 they committed to go do. That was never the  
17 discussion.

18 I mean, both parties came in front  
19 of the Commission and yourself and talked  
20 about all of the benefits that would come  
21 from this transaction, and the retirement of  
22 these legacy, old, dated technologies and the  
23 provision of new and capable 4G and 5G  
24 services and coverage and all the things  
25 we're all so excited about, and that's what  
26 we were talking to the Commission about.

27 And it was impossible for us back  
28 then, December of 2019, before the deal was

1 even approved, to have predicted that there  
2 would be a circumstance where DISH would not  
3 meet the obligations it had freshly --  
4 freshly signed up for and agreed to whereby a  
5 situation where a customer would be  
6 disconnected and not have a compatible device  
7 could be predicted.

8 COMMISSIONER RECHTSCHAFFEN: Thank you,  
9 Mr. Ray. I don't have any other questions at  
10 this point.

11 ALJ MASON: Thank you, Commissioner  
12 Rechtschaffen.

13 Judge Bemmesderfer, do you have any  
14 questions for Mr. Ray?

15 EXAMINATION

16 BY ALJ BEMESDERFER:

17 Q Mr. Ray, I admire your stamina, but  
18 I'm going to have to call on it for a little  
19 bit.

20 A It's all good, your Honor. I can  
21 keep going here, your Honor.

22 Q My questions are all going to  
23 relate to spectrum, I believe. And I'd like  
24 to start with your supplemental testimony on  
25 page 9, and you don't have to have this in  
26 front of you because this is just by way of  
27 setting the table. On page 9, you advised  
28 the Commission that to roll out your 5G

1 network, you would use a combination of  
2 low-band, mid-band and high-band frequencies,  
3 and that one of the things that made the  
4 merger with Sprint attractive is that you had  
5 complimentary spectrum holdings and when you  
6 put them together one and one is more than  
7 two. I don't think I'm misrepresenting you  
8 there.

9 A No, I think that's accurate, your  
10 Honor.

11 Q So now I want to take a quick look  
12 at the refarming table. The version of it  
13 that I'm looking at is on page 11 of your  
14 supplemental testimony. This is the same one  
15 we looked at before, and I want to make sure  
16 that I understand this table.

17 Do you have a copy of it in front  
18 of you?

19 A I do.

20 Q All right. I'm looking at the  
21 right-hand column, the one that says, "New  
22 T-Mobile," and I'm going down that column  
23 until we get to the block that says "PCS."

24 Are you there?

25 A I am.

26 Q Now, I want to go across that  
27 column to 2023, and what I see -- I just want  
28 you to confirm that I'm correctly



1 interpreting what I'm looking at -- is that  
2 in 2023 according to the plan that you were  
3 operating on in November in 2019, there was  
4 70 MHz of PCS spectrum assigned -- I'm sorry.  
5 Correction. That would be 40 MHz of PCS  
6 spectrum assigned to the 5G roll out.

7 Am I reading that correctly?

8 MR. GELFAND: Your Honor, I really  
9 don't want to interrupt your Honor. There is  
10 some confidentiality issue around this. I  
11 don't know if that particular point is  
12 sensitive, and we, obviously, don't want to  
13 interrupt, but I feel to protect my client's  
14 interest, I need to raise the issue, but at  
15 least to have an opportunity to consult with  
16 my client. I apologize, your Honor. I  
17 really do.

18 ALJ BEMESDERFER: Take a minute and ask  
19 your client whether I should continue with  
20 this or not.

21 (Off the record.) ]

22 (Whereupon, the following material  
23 was placed under seal by direction of  
ALJ Bemederfer.)

24 (Begin Sealed material.)  
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(End sealed material.)

EXAMINATION

BY ALJ BEMESDERFER:

Q All right. Thank you very much.  
Now, I do want to refer you to the  
commitments that T-Mobile made to the FCC.  
As I indicated, they contained a May 20th,  
2019 letter from counsel for Sprint and  
T-Mobile to the FCC, and that letter, as I  
indicated, is the record of this proceeding.  
On page 3 of that letter, T-Mobile made the

1 following commitment, quote:

2           Within three years of the mergers  
3           closing, New T-Mobile will blanket  
4           three-fourths of the country's  
5           population with mid-band spectrum.

6 Just to be clear, PCS is mid-band spectrum as  
7 is 2.5 gigahertz spectrum; is that not  
8 correct?

9           A     That's correct, your Honor, as is  
10          the AWS, the advanced wireless services  
11          spectrum.

12          Q     That same letter goes on to explain  
13          that the reason New T-Mobile will be able to  
14          achieve that coverage is, quote, "New  
15          T-Mobile's 5G network will be able to achieve  
16          these exceptional performance services with  
17          the combined capabilities of T-Mobile's  
18          low-band and Sprint's mid-band spectrum."  
19          This merely reflects what's shown in that  
20          chart.

21                 But in other words, for New  
22          T-Mobile to fulfill its obligation, its  
23          coverage commitment to the FCC, it needs to  
24          use that Sprint -- reformed Sprint PCS  
25          spectrum, does it not?

26          A     Well, it's a combination, your  
27          Honor. So if you look at three-year and  
28          six-year, at the three-year point we said we



1 would be using mid-band spectrum, and that's  
2 a combination of, you know, 2.5, some PCS in  
3 some places. That's the lavender or lilac  
4 blocks that we looked at on the spectrum  
5 chart. But we would be utilizing mid-band  
6 spectrum, you know, to provide, you know, the  
7 speeds and the capacity and performance on  
8 top of the low-band layer that, you know,  
9 T-Mobile would be deploying. So it's a  
10 combination. Primarily at that point in  
11 time --

12 Q But, to my question, the plan, as  
13 shown on the confidential document that we  
14 looked at, does support the idea that you  
15 would have to use that PCS spectrum in order  
16 to achieve your commitment to the FCC?

17 A It's part of the plan as outlined  
18 on the spectrum chart, your Honor. So there  
19 is some PCS at the three-year mark. So we  
20 would be in April of 23, if my math is  
21 correct. Now at that point in time, we would  
22 have a combination of 2.5 and PCS spectrum  
23 being leveraged to deliver the 5G services.

24 Q So to be a little bit more  
25 specific, in order to fulfill your coverage  
26 obligations, as stated in the letter to the  
27 FCC, you would have to use the PCS spectrum  
28 that Sprint was using to support CDMA. And

1 you would have to use it prior to the  
2 expiration of three years in order to make  
3 that 2023 deadline, wouldn't you?

4 A Well, it depends, your Honor. So,  
5 you know, the -- you mentioned coverage  
6 commitments. Obviously we're using a lot of  
7 different spectrums to deliver on coverage,  
8 but in relation to mid-band -- I mean, this  
9 is a plan that we put together back in 2018  
10 and presented in 2019. So for example, your  
11 Honor, to meet the FCC commitments, if we  
12 were able to successfully deploy, you know,  
13 more 2.5 gigahertz spectrum on more sites,  
14 for example, as we looked to densify and  
15 upgrade elements of the network, then we  
16 could meet the commitments, you know, that  
17 way.

18 But our plan, as we put it together  
19 back in '18, was to leverage some of the PCS  
20 spectrum, leverage the 2.5 spectrum and  
21 leverage -- I think it's also shown on the  
22 chart being a 600 megahertz spectrum.

23 Q So my question is: At the time you  
24 put that plan together, you knew or you  
25 intended -- as you just said, you intended to  
26 leverage that PCS spectrum, and that really  
27 entails shutting down the CDMA network before  
28 three years. That's the only way you're

1 going to get that spectrum?

2           A     Well, there's other sources of PCS  
3 spectrum too, your Honor, right? So I don't  
4 disagree with your statement that we would  
5 look to use the PCS spectrum that was  
6 reformed from the CDMA services assuming  
7 everybody met their migration and  
8 obligations, you know, to make that happen  
9 for the notice periods, then absolutely we  
10 could use the PCS spectrum. But we might  
11 decide to use other PCS spectrum that was  
12 freed up from LTE within Sprint. There's a  
13 combination of different sources that you  
14 could put together on the plan. But the  
15 intent was to use the PCS spectrum that we  
16 would free up and reform from CDMA. And it's  
17 a natural assumption that the legacy  
18 technology would be retired, and that would  
19 be (inaudible) spectrum for us to repurpose  
20 for the new technology.

21           Q     I just have a couple more  
22 questions. I -- well, let me make an  
23 observation. And this doesn't relate to the  
24 spectrum. It relates to the three-year  
25 discussion that you had at considerable  
26 length before. In reading through your  
27 testimony and your supplemental testimony,  
28 one of the things I note is that you almost

1 always refer to completing customer migration  
2 or integration within three years. I know  
3 it's being nit picky, but within three years  
4 could mean less than three years or not more  
5 than three years. And in context, I think it  
6 frequently reads as if it's not more than  
7 three years. That's just on observation that  
8 I make about the language. I have -- I have  
9 no other questions for you, Mr. Ray.

10 THE WITNESS: Thank you, your Honor.

11 ALJ MASON: All right. Why don't we go  
12 off the record for just a minute. I'm going  
13 to try and do some scheduling here.

14 (Off the record.)

15 ALJ MASON: And we're on the record.

16 ALJ BEMESDERFER: And we're on the  
17 record, yes. All right. Mr. Blum, do you  
18 attest that you agree to the evidentiary  
19 hearing in this instant proceeding being held  
20 on Webex?

21 MS. TAFF-RICE: Your Honor, I'm so  
22 sorry. Mr. Blum just informed me that he has  
23 been muted I think because we went to  
24 confidential session. Can we have him taken  
25 off mute, please.

26 (Off the record discussion with IT.)

27 ALJ BEMESDERFER: Mr. Blum, can you  
28 hear me?

1           THE WITNESS: I can, your Honor. Thank  
2 you.

3           ALJ BEMESDERFER: Okay. I'm going to  
4 read your attestation. You will just answer  
5 each of these in turn. Did you attest that  
6 you agree to the evidentiary hearing in this  
7 proceeding being held via Webex?

8           THE WITNESS: I do.

9           ALJ BEMESDERFER: Do you attest that  
10 you agree to the witness testimony exhibits  
11 being presented via Webex?

12          THE WITNESS: I do.

13          ALJ BEMESDERFER: Do you attest that  
14 you agree to the oaths of remote witnesses  
15 being received by Webex communication?

16          THE WITNESS: I do.

17          ALJ BEMESDERFER: Do you attest that  
18 you agree to adhere to all formal rules of  
19 decorum including the prohibition against  
20 coaching witnesses?

21          THE WITNESS: I do.

22          ALJ BEMESDERFER: Do you attest that  
23 you agree that you will not make any  
24 recording of this proceeding?

25          THE WITNESS: I do.

26          ALJ BEMESDERFER: Do you attest that  
27 you understand that any recording of a  
28 proceeding held by Webex and/or

1   teleconference including screenshots or other  
2   visual copying of a hearing is absolutely  
3   prohibitive?

4           THE WITNESS:   I do.

5           ALJ BEMESDERFER:  Do you attest that  
6   you understand that a violation of these  
7   prohibitions may result in sanctions,  
8   restricted entry to future hearings, denial  
9   of entry to future hearings, or any other  
10   sanctions deemed necessary by the Commission?

11          THE WITNESS:   I do.

12          ALJ BEMESDERFER:  Last one.  Do you  
13   attest that you agree that during the  
14   evidentiary hearing you will not use  
15   documents not previously shared with the  
16   opposing party or identified by the presiding  
17   officer?

18          THE WITNESS:   I do, your Honor.

19                   JEFF BLUM, called as a witness by  
20                   DISH Network Corporation, having been  
21                   sworn, testified as follows:

22          ALJ BEMESDERFER:  Ms. Taff-Rice, your  
23   witness.

24          MS. TAFF-RICE:   Thank you, your Honor.

25                   DIRECT EXAMINATION

26          BY MS. TAFF-RICE:

27                  Q    Mr. Blum, would you please state  
28                      your name and title for the record.

                A    Jeff Blum.  I'm DISH's executive

1 vice president for external legislative  
2 affairs. I've been with DISH over 15 years,  
3 and I'm a lawyer.

4 Q Have you testified in this  
5 proceeding previously, Mr. Blum?

6 A I have.

7 Q When did you testify?

8 A December of 2019.

9 Q What was the topic of your  
10 testimony?

11 A The topic of my testimony was to  
12 explain the DOJ remedy and the Boost  
13 divestiture and the 800 megahertz license  
14 purchase agreement, to satisfy the Commission  
15 that the merger with the remedy was in the  
16 public interest of Californians.

17 Q And after your testimony on  
18 December 2019, did you participate in the  
19 proceeding further?

20 A I did. DISH filed a brief, and I  
21 reviewed the post-trial briefs and the  
22 testimony.

23 Q And you're aware that the reason  
24 we're having this hearing this morning and  
25 afternoon is that the Commission has issued  
26 an order to show cause against T-Mobile as to  
27 why T-Mobile should not be sanctioned for  
28 testimony that it provided under oath that

1 was false and misleading related to the  
2 divestiture of the Boost customer base to  
3 DISH?

4 A Yes, I'm aware of that.

5 Q Mr. Blum, in 2019, were you  
6 involved in negotiations between T-Mobile and  
7 DISH regarding the divestiture of that Boost  
8 customer base?

9 A Extensively, yes.

10 Q When did that divestiture occur?

11 A The actual divestiture occurred in  
12 July -- on July 1st, 2020. The negotiations  
13 have been started around May of 2019 and  
14 lasted about three months.

15 Q And what was the role in those  
16 negotiations?

17 A I was the lead lawyer, regulatory  
18 attorney involved in negotiating the  
19 agreements with T-Mobile, negotiating the DOJ  
20 final judgment, and then participated with,  
21 you know, attorneys general (inaudible) and  
22 wanted to understand the DOJ remedy.

23 Q And approximately what was the  
24 total length of time that those negotiations  
25 went on?

26 A From about May to July of 2019.

27 Q Did the negotiations start with  
28 term fees?



1           A     They did after initial  
2     conversations with T-Mobile executives.

3           Q     And then eventually drafts of  
4     documents were exchanged?

5           A     Correct.

6           Q     And in-person meetings occurred?

7           A     Yes.

8           Q     And phone calls probably happened  
9     as well, right?

10          A     Yes.

11          Q     Can you just provide generally the  
12     people who were involved in those  
13     negotiations other than yourself?

14          A     From DISH, it was my boss, Charlie  
15     Ergen, the chairman and co-founder of DISH,  
16     his sort of deputy, Tom Cullen, myself and  
17     other DISH lawyers and regulatory attorneys.

18          Q     And at the time of those  
19     negotiations, was the Boost customer base  
20     serviced by Sprint CDMA network?

21          A     Almost exclusively. It was our  
22     understanding there were about just over 9  
23     million Boost subscribers that relied upon  
24     the CDMA network.

25          Q     What spectrum did the CDMA network  
26     operate on?

27          A     Our understanding was the 800  
28     megahertz spectrum.

1           Q    So prior to Mr. Ray's December 2019  
2 testimony that we talked about extensively  
3 today, was it your understanding that  
4 T-Mobile would keep the CDMA network  
5 operation for at least three years?

6           A    Yes.

7           Q    What was the basis for that belief?

8           A    Early on in the discussions,  
9 T-Mobile basically said they had a three-year  
10 CDMA migration plan and that we could not  
11 purchase the 800 megahertz spectrum where  
12 CDMA resided for three years. They said that  
13 it's complex but if they can't get it done,  
14 they insisted upon the right to lease back  
15 the 800 megahertz spectrum for up to five  
16 years so they could continue the migration  
17 process before they shut down the spectrum.

18          Q    So basically, the first part of  
19 that transition period was a three-year  
20 migration period during which T-Mobile would  
21 continue to hold the license to the spectrum,  
22 correct?

23          A    Correct.

24          Q    And after that date, DISH would  
25 have the opportunity to purchase that 800  
26 megahertz spectrum if it wanted to?

27          A    Right. They explained that the  
28 reason it was three years was because they

1 needed that three-year period to do what they  
2 needed to do to complete the migration. We  
3 would then purchase the 800 megahertz  
4 spectrum. But during those negotiations,  
5 they explained, if we can't get it done, we  
6 must have the right to lease back 800  
7 megahertz spectrum so they could continue  
8 operating the CDMA network until all the work  
9 was done for a period of up to five years.

10 Q And in the interest of time, I'm  
11 not going to ask you to look at the exhibit,  
12 but are those details that you just set forth  
13 that there was a three-year period before  
14 DISH could buy the 800 megahertz spectrum and  
15 there was an opportunity for T-Mobile to  
16 lease it back, that's all set forth in the  
17 lease purchase agreement, isn't it?

18 A Correct.

19 Q And that has been marked this  
20 morning -- just for the record, that was  
21 OSCD-4?

22 A I believe so.

23 Q So what would happen if during that  
24 three-year migration period where T-Mobile  
25 continued to own the 800 megahertz spectrum,  
26 what would happen if it stopped using that  
27 spectrum?

28 A One of the things that we ask for

1 and got in the negotiations is a  
2 representation that they had to keep the  
3 licenses in good standing. The licenses are  
4 granted by the FCC, and there's a general  
5 rule applicable to all licenses that if you  
6 shut down spectrum that you're using for more  
7 than 6 months, 180 days, the licenses are  
8 automatically forfeited back to the FCC. So  
9 there's a representation in the license  
10 purchase agreement consistent with this  
11 three- to five-year migration period that  
12 they had to keep the licenses in good  
13 standing. If they shut off service on the  
14 800 megahertz spectrum licenses for more than  
15 six months, the licenses would be lost. We  
16 wouldn't be able to purchase those licenses.

17 Q So just to take an example, if  
18 T-Mobile were to completely terminate use of  
19 the 800 megahertz spectrum on January 1st of  
20 2022, DISH would not be able to purchase that  
21 spectrum within 180 days, correct?

22 A Correct. By July 1st of 2022 under  
23 FCC rules, those spectrum licenses would be  
24 automatically forfeited and we would not be  
25 able to purchase those licenses from  
26 T-Mobile.

27 Q But there was a requirement within  
28 the lease -- license purchase agreement that

1 they had to maintain the validity of the  
2 spectrum, correct, the 800 megahertz  
3 spectrum?

4 A Correct. That Section is 5.4.

5 Q Was that an important provision to  
6 do?

7 A Yes. If you're -- before we sign  
8 anything, we want representation that the  
9 spectrum that we plan to buy would remain in  
10 good standing. It's also consistent with the  
11 discussions that we couldn't purchase it for  
12 three years. They needed that time for the  
13 migration and then the right to potentially  
14 lease back the spectrum for an additional two  
15 years.

16 Q Mr. Blum, prior to your testimony  
17 today, have you had an opportunity to review  
18 Decision 20-04-008?

19 A I have.

20 Q And do you understand that to be  
21 the order the Commission issued that approved  
22 the Sprint T-Mobile merger?

23 A Yes.

24 Q For the record, DISH has marked  
25 that as Exhibit OSCD-17. ]

26 That order was issued in April 2020.

27 Was that the first time that you  
28 were able to review the order and make an

1 assessment of, you know, whether it captured  
2 the commitments that T-Mobile made during the  
3 Commission's proceeding?

4 A Yes.

5 Q And is there something in  
6 particular in that order that you believe  
7 captures the three-year CDMA migration  
8 commitment that T-Mobile made during the  
9 proceeding?

10 A Yes. Ordering Paragraph 6 of the  
11 first sentence says that:

12 The legacy of Sprint customers  
13 shall not be degraded by T-Mobile  
14 during the migration period of  
15 2020 to 2023.

16 Q That term "legacy network" or  
17 "legacy Sprint customers," that actually has  
18 a definition in some of the documents that  
19 DISH and T-Mobile negotiated, doesn't it?

20 A It does. In the MNSA, there's  
21 actually a definition of that. And it was,  
22 you know, clear based upon all the  
23 discussions that we were talking about Legacy  
24 Sprint that was including this -- the 9  
25 million Boost CDMA subscribers.

26 Q But, specifically, Section 9.43  
27 refers to Legacy Network as meaning the  
28 Sprint, CDMA, and LTE network on which

1 Boost/Sprint subscribers receive service;  
2 correct?

3 A Right. That is correct.

4 Q Okay. Now, during the negotiations  
5 with DISH, but before the Commission issued  
6 its order in April of 2020, was there ever  
7 any discussion with T-Mobile about a CDMA  
8 migration that would be less than three  
9 years?

10 A No.

11 Q Were there ever any discussions  
12 with T-Mobile about a CDMA migration period  
13 shorter than three years after the Commission  
14 issued Order 20-04-008?

15 A No, not until we received their  
16 October 2nd, 2020, notice. As I said, they  
17 were -- you know, said, we need three years,  
18 but we need to have the right to continue  
19 using the CDMA for up to five years.

20 Q So until DISH received a letter  
21 from T-Mobile in October of 2020, there was  
22 never any discussion, there was no phone  
23 call, hey, we think we might shut down the  
24 network at the end of 2021?

25 A No.

26 Q Well, when DISH got that letter,  
27 what was your reaction?

28 A We were very surprised. We were

1 concerned. The context is, we purchased  
2 Boost on July 1st, 2020. So in the MVNO  
3 wireless game for three months, and we  
4 received a notice that they would be shutting  
5 down the entire CDMA network nationwide  
6 January 1st, 2022. And we were concerned  
7 about the impact to our customers, millions  
8 of customers relying upon the CDMA network,  
9 and also concerned about the competitive  
10 affect that that decision would have on us  
11 just as we entered the market.

12 Q So I assume DISH was not shy about  
13 this. DISH told T-Mobile that it believed  
14 T-Mobile was reneging on a commitment that  
15 DISH was depending on for a three-year CDMA  
16 customer migration period; correct?

17 A Yes, both in writing and verbally.

18 Q And can we just identify some  
19 examples of those communications?

20 A Yes.

21 MR. GELFAND: Objection, your Honor.  
22 Unless those communications are in the  
23 record, I don't think it's appropriate to be  
24 putting things indirect -- in fact, I think  
25 it was part of the certification that we  
26 would not be doing that today.

27 ALJ MASON: Ms. Taff-Rice, are you  
28 going to follow up the question with a



1 reference to some exhibit that you're going  
2 to be offering?

3 MS. TAFF-RICE: Well, actually, your  
4 Honor, this goes directly to Mr. Ray's  
5 testimony this morning, that he says there  
6 was never any discussions with T-Mobile and  
7 DISH that -- for a period that was three  
8 years. And so, I mean, this is directly  
9 rebutting Mr. Ray's own testimony in this  
10 topic.

11 (Crosstalk.)

12 MR. GELFAND: Your Honor, that  
13 testimony was about -- back in 2019. Now  
14 we're getting questions about what happened  
15 once DISH was formulating its new strategy to  
16 claim this commitment after the fact. These  
17 are different --

18 ALJ MASON: I -- my question though is,  
19 the examples, Ms. Taff-Rice, that you're  
20 asking Mr. Blum about, are you going to be  
21 offering the physical examples into the  
22 record? That's what my question was.

23 MS. TAFF-RICE: Other than the letter  
24 that T-Mobile sent to DISH, we were not, your  
25 Honor.

26 ALJ MASON: Okay. I'll sustain the  
27 objection. Let's focus on the letter.

28 ///

1 BY MS. TAFF-RICE:

2 Q Okay. The letter basically told  
3 DISH that the entire CDMA network would be  
4 shut down nationwide; correct?

5 A Correct.

6 Q And was that consistent with what  
7 DISH understood the arrangement for CDMA  
8 migration to be?

9 A No. It was entirely inconsistent  
10 with what they discussed with us during our  
11 negotiations. It's inconsistent with what  
12 Mr. Ray testified to at the hearing. It's  
13 inconsistent with what T-Mobile filed in  
14 their post-trial brief. And it's  
15 inconsistent with what the Commission imposed  
16 upon T-Mobile in ordering paragraph 6.

17 Q Mr. Blum, you're aware that after  
18 DISH filed its petition for modification at  
19 the Commission, T-Mobile filed a response to  
20 that, didn't it?

21 A It did, I believe, in May.

22 Q And wasn't one of the reasons  
23 T-Mobile offered for the early sunset of CDMA  
24 that there will be tremendous cost savings if  
25 it could shut down the CDMA early?

26 A Correct.

27 Q And the number is -- again, it's a  
28 confidential number, so we're not going to

1 say it out loud. But you have not seen the  
2 actual number. But you've been given a unit  
3 of monetary value, and without saying that in  
4 the record, would you characterize that as an  
5 exceedingly large number?

6 A Yes.

7 MR. GELFAND: Your Honor, why is it  
8 relevant what -- what -- why is it relevant  
9 what T-Mobile is going to save as a result of  
10 the -- how does that go to whether there was  
11 a false statement in December of 2019?

12 I'm sorry, your Honor. This is a  
13 waste of time.

14 ALJ MASON: I don't hear an objection.  
15 So let's just move on.

16 BY MS. TAFF-RICE:

17 Q So in T-Mobile's response to DISH's  
18 petition for modification, did T-Mobile offer  
19 any other reason why it felt it could no  
20 longer continue to support CDMA for three  
21 years?

22 A They are claiming now that they  
23 need to shut down the network in order to do  
24 5G.

25 Q During the negotiations that  
26 T-Mobile had with DISH, did T-Mobile ever  
27 tell DISH that it would be too costly for it  
28 to continue to operate CDMA for three years?

1           A     I don't believe so.

2           Q     During the negotiations that  
3 T-Mobile had with DISH in 2019, did T-Mobile  
4 ever say that it would be too costly to  
5 maintain the CDMA network for three years?

6           A     I don't believe so.

7           MS. TAFF-RICE: I believe that's all  
8 the questions that I have for Mr. Blum. He's  
9 available for cross-examination.

10          ALJ MASON: Thank you, Ms. Taff-Rice.

11                 Mr. Gelfand, you may cross-examine  
12 the witness now.

13          MR. GELFAND: Thank you, your Honor. I  
14 cannot commit to being done by 5:30, I'm  
15 sorry to say. I do need, probably, the full  
16 half hour.

17          ALJ MASON: All right. We'll go for a  
18 half an hour.

19          MR. GELFAND: All right. Thank you,  
20 your Honor.

21                         CROSS-EXAMINATION

22          BY MR. GELFAND:

23           Q     Mr. Blum, did I hear you testify  
24 that you never discussed with T-Mobile the  
25 possibility of a migration that would occur  
26 in less than three years?

27           A     No. All the conversations were  
28 that this would be a three- to five-year

1 migration period.

2 Q All right. I'm going to ask you  
3 about a business plan that was prepared by  
4 DISH in 2019. And I want to give your  
5 counsel or you an opportunity to object if  
6 you believe that these questions are  
7 confidential.

8 A If you're referring to business  
9 plans that we submitted at any point in time,  
10 those would be highly confidential.

11 MR. GELFAND: All right, your Honor.  
12 Then I think we probably have to go in a  
13 confidential session to do these questions.

14 MS. TAFF-RICE: Your Honor, I highly  
15 doubt that. I don't know what documents Mr.  
16 Gelfand is referencing. We've had no  
17 opportunity to review them. So I think Mr.  
18 Blum will do the best he can to answer  
19 questions.

20 But, you know, in terms of fairness,  
21 we don't even know what documents he's  
22 talking about. But most of these documents  
23 that occurred in that period of time would be  
24 considered highly confidential.

25 (Crosstalk.)

26 ALJ MASON: All right. We can go to  
27 the confidential record. And we can argue in  
28 there.

1 MR. GELFAND: Thank you, your Honor.

2 (Off the record.)

3 ALJ MASON: Okay. We are going to be  
4 on the record. We're on the record in the  
5 confidential session.

6 (Whereupon, the following material  
7 was placed under seal by direction  
of ALJ Mason.)

8 (Begin sealed material.)

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(End sealed material.)

ALJ BEMESDERFER: All right.

MR. BLUM: Mr. Gelfand, I can't hear  
you.

(Off the record discussion with IT.)

MS. TOLLER: There we go. Go.

MR. GELFAND: All right. Thank you,  
Judge Bemederfer. Can we just have an  
opportunity to invite our client back into  
the room if they wish to participate in  
the --

MS. TOLLER: I sent them the text.

MR. GELFAND: Okay. We've notified  
them. Never mind, your Honor.

Q Okay. I want to show you your  
reply brief in connection with the petition  
to modify, and that is OSC T-Mobile 15 --  
Exhibit 15. OSC T-Mobile 15. And that's the  
reply in support of petition of DISH Network  
Corporation to modify. It was dated June

1 8th, 2021. You see that document? Do you  
2 have that in front of you, Mr. Blum?

3 A Yes, I do, Mr. Gelfand.

4 Q All right. And if you look on the  
5 title page, you're one of the names on there,  
6 correct?

7 A Yes.

8 Q And so you attested -- under Rule  
9 1.1 actually, you attested to this Commission  
10 that that was an accurate filing. As far as  
11 you knew, everything in there was accurate,  
12 right?

13 A Right.

14 Q All right. So if we go to page 20  
15 of that document that you filed, there's a  
16 heading in the middle of that page, and it  
17 says:

18 T-Mobile's obligation to operate  
19 the CDMA network until at least  
20 July 1st, 2023 is memorialized in  
21 the agreement between itself and  
22 DISH.

23 You see that?

24 A I do, yes.

25 Q So you told the Commission that  
26 there was an obligation that T-Mobile had to  
27 operate CDMA until at least July 1st, 2023,  
28 correct? That's memorialized in the

1 agreements between the parties, correct?

2 A Correct.

3 Q There isn't any agreement between  
4 the parties, is there, Mr. Blum, that  
5 actually says T-Mobile will operate the CDMA  
6 network until at least July 1st, 2023? That  
7 doesn't exist anywhere, does it?

8 A That express term, it doesn't, Mr.  
9 Gelfand, but the agreement that it describes,  
10 the license purchase agreement, that is our  
11 interpretation of that.

12 Q It's your interpretation. I'm  
13 asking you where it's memorialized, sir.  
14 Where is it memorialized in that agreement  
15 that T-Mobile has an obligation to operate  
16 the CDMA network until at least July 1st,  
17 2023? Can you cite the section, the page  
18 where that obligation is memorialized?

19 A I believe it is a combination of  
20 Section 2.3 and 5.4 of the license purchase  
21 agreement. We cannot purchase the 800  
22 megahertz spectrum for three years, and 5.4  
23 says that they need to keep the spectrum in  
24 good standing with the FCC. So if they shut  
25 off the spectrum prior to the sale, then the  
26 licenses would be forfeited to the FCC and we  
27 wouldn't be able to acquire those licenses.

28 Q So neither of those provisions that



1 you just described said that T-Mobile had an  
2 obligation to maintain the CDMA network until  
3 at least July 1st, 2023. You're inferring  
4 that and making that legal argument, but it's  
5 not memorialized there, is it, sir?

6 A The specific words that you're  
7 describing are not in the license purchase  
8 agreement, but DISH believes that the license  
9 purchase agreement, that's the consequence of  
10 those two Sections 2.3 and 5.4.

11 Q Well, there's a difference, isn't  
12 there, between believing something and  
13 actually having it memorialized? Don't you  
14 think the Commission should have been told --  
15 instead of being told that it was  
16 memorialized, don't you think the Commission  
17 should have been told that just happens to be  
18 your belief. Don't you think that would have  
19 been a more candid way to say this, Mr. Blum?

20 A No. I think this is, you know,  
21 generally accurate. It's describing --  
22 you're focused on the heading. The actual  
23 description on the other pages is -- it  
24 explains our position.

25 Q You seem to put a lot of weight on  
26 this idea that the license had to be  
27 maintained. Is it your testimony that the  
28 only way to maintain that license is for

1 T-Mobile to actually maintain a CDMA network  
2 nationwide to support the Boost CDMA  
3 customers? Is that your testimony?

4 A To the way the FCC rule works, it's  
5 per license area. So T-Mobile has an  
6 obligation to continue service per license  
7 area for 800 megahertz. And if they fail to  
8 do so for greater than six months, then the  
9 licenses are automatically forfeited.

10 Q But they don't need to maintain  
11 that service for a CDMA Boost network, do  
12 they?

13 A Not specifically. But our  
14 understanding was that's what they would be  
15 doing. And as Mr. Ray explained, they plan  
16 to shut off CDMA on January 1, 2022 and LTE  
17 on June 30th, 2022. So the consequence of  
18 that would be the license would be forfeited  
19 six months -- on January 1st, 2023.

20 Q Just three years after the  
21 beginning of 2020, right?

22 A Well, that's what the rule  
23 provides, that if they -- if they shut off  
24 the network on -- stop using 800 megahertz  
25 spectrum on June 30th, 2020, then on January  
26 1st, 2023, the licenses would be  
27 automatically forfeited. If they shut off  
28 the network or 800 megahertz spectrum on

1 January 1st, 2022, the licenses would be  
2 forfeited on July 1st, 2022.

3 Q They have to completely shut it  
4 off, right? I mean, for example, if they  
5 keep it operating for internet and things,  
6 but if doesn't happen to be available to  
7 Boost customers, that would qualify to  
8 maintain the license, right? ]

9 A Potentially. But what our  
10 understanding of what Mr. Ray explained is,  
11 it's currently being used for CDMA and LTE.  
12 So if they shut off CDMA on January 1, 2022,  
13 and shut off LTE on June 30th, 2022, then  
14 they would be violating Section 5-4 because  
15 their licenses would terminate 6 months  
16 later.

17 Q Well, you talk about CDMA here, Mr.  
18 Blum. Now you're saying it all the hinges on  
19 LTE. So let's make sure we're on the same  
20 page.

21 So you agree with me that if the  
22 CDMA network is shut down, but the LTE  
23 network continues on, those licenses are  
24 maintained; correct?

25 A If they are providing service in  
26 each of those license areas.

27 Q And you knew in 2019, did you not,  
28 that this -- that this -- that this spectrum

1 -- this 800 megahertz spectrum was being used  
2 both for CDMA and for LTE, didn't you?

3 A I don't recall that.

4 Q You don't recall.

5 And so in 2019, you had not been  
6 told that T-Mobile was going to plan an LTE  
7 shutdown in the middle of 2022, had you?

8 You hadn't been told that back  
9 then?

10 A That is correct.

11 Q So as far as you knew, they could  
12 shut down the CDMA network, continue the LTE  
13 network through your hypothetical three-year  
14 period, you had no idea; right?

15 It could have gone either way;  
16 right?

17 A That's not what they explained to  
18 us, Mr. Gelfand.

19 Q What did they explain to you then?  
20 Let's go through it again.

21 In 2019, what was explained to you  
22 about 800 megahertz spectrum?

23 MS. TAFF-RICE: Your Honor, before Mr.  
24 Blum answers, I'm going to object. This has  
25 been asked and answered. We are now at 6:00  
26 o'clock.

27 You know, this is not a hearing  
28 about what DISH did or did not do or what

1 DISH did or did not know. This is about  
2 whether or not T-Mobile misled the  
3 Commission. And this testimony just doesn't  
4 bear on that. This bears on whether or not  
5 T-Mobile could try to justify the fact that  
6 they misled the Commission.

7 MR. GELFAND: No, your Honor -- and by  
8 the way, I agree that this hearing is not  
9 about what DISH did or didn't or thought or  
10 didn't think. That's why we objected to Mr.  
11 Blum as a witness. I think all of his  
12 testimony is incompetent to that issue.

13 But DISH is making this argument  
14 that because -- so to say it's memorialized.  
15 But it's not, your Honor. That's going to be  
16 obvious. We'll reinforce that in  
17 post-hearing briefing.

18 But they are saying that because  
19 there was a license agreement for  
20 800 megahertz spectrum, they are saying they  
21 did this calculation in their heads back in  
22 2019. And I guess they are saying the  
23 Commission did the same thing, which I don't  
24 think is true. But they are saying they did  
25 all this calculation, and they came at the  
26 conclusion that because of a license  
27 agreement --

28 ALJ BEMESDERFER: Mr. Gelfand, I

1 understand the argument Mr. Blum has made. I  
2 also understand the objection that Ms.  
3 Taff-Rice has raised. And I'm going to  
4 sustain that objection, because I think this  
5 testimony has gone -- it's getting far away  
6 from the core of this proceeding, which is to  
7 determine whether or not T-Mobile made any  
8 kind of actionable remarks to the Commission.  
9 And rather than going to get -- shut it off  
10 into what is a side issue to that proceeding,  
11 I'm going to sustain this objection.  
12 Furthermore, it is 6:00 o'clock, the  
13 reporters are getting tired, they need to go  
14 home. The Judge is getting tired, and he  
15 needs to go home. I rather imagine the  
16 lawyers are getting tired and would like to  
17 go home. So let's talk about post-trial  
18 briefing here.

19 MR. GELFAND: All right, your Honor.  
20 But if I'm cut off now, I really -- I move to  
21 strike all of Mr. Blum's testimony. You are  
22 correct, your Honor, that this has nothing to  
23 do with the issues before us. But he  
24 testified to it. And his Counsel asked him  
25 questions about it. And I --

26 (Crosstalk.)

27 ALJ BEMESDERFER: I hear you.

28 (Crosstalk.)

1 MR. GELFAND: I'm entitled to --

2 ALJ BEMESDERFER: I hear your motion.  
3 I'll rule on it, but not now.

4 MR. GELFAND: All right.

5 ALJ BEMESDERFER: Okay.

6 Let's talk about post-trial  
7 briefing. I would like to see opening briefs  
8 October 15th, replies October 29th.

9 MR. GELFAND: And your Honor says,  
10 "Opening briefs."

11 Does that mean you want a brief from  
12 us and from DISH?

13 ALJ BEMESDERFER: I want a brief from  
14 T-Mobile. And then DISH can -- as a party,  
15 can reply. But I want to see T-Mobile's  
16 briefing on October 15th.

17 MR. GELFAND: All right. Thank you,  
18 your Honor.

19 We're very grateful for that  
20 opportunity. And we appreciate it very much.

21 MS. TOLLER: Your Honor, can I just ask  
22 for clarification on that? I mean, normally,  
23 in this kind of case, either we would see  
24 concurrent opening and concurrent reply  
25 briefs if DISH wants to file a brief as well.  
26 Or we would see, you know, with us opening,  
27 DISH replying, and (inaudible) --

28 (Crosstalk.)

1           ALJ BEMESDERFER: I want T-Mobile to  
2 open and DISH can reply.

3           Okay? Fair enough?  
4           (Crosstalk.)

5           MR. GELFAND: Your Honor, I thank you  
6 for hearing us out today. I know some of  
7 this was a little complicated, maybe even a  
8 little contentious, should I say. I do  
9 appreciate that. Obviously, we take this  
10 matter very seriously.

11           I think, as I've said a couple  
12 times, T-Mobile is entitled to putting into  
13 the record the evidence that shows that we  
14 didn't violate this rule. And I'm grateful  
15 for you giving us that leeway.

16           Thank you, your Honor.

17           ALJ BEMESDERFER: Commissioner  
18 Rechtschaffen, do you have anything further  
19 you'd like to say?

20           COMMISSIONER RECHTSCHAFFEN: I do not.  
21 Thank you, especially, to the court reporters  
22 for their endurance well beyond what we had  
23 scheduled for. And I do think T-Mobile got  
24 more than a full day in court to present  
25 everything you wanted. And if there's  
26 anything left, you can do it -- you can  
27 obviously put it in your post-trial briefs.

28           ALJ BEMESDERFER: And just for the



1 benefit of those not here in this building,  
2 they just turned off all the lights.

3 MS. TOLLER: Your Honor, we haven't  
4 moved exhibits into evidence. Would you like  
5 us just to --

6 ALJ BEMESDERFER: Yes. Thank you for  
7 the reminder, Ms. Toller --

8 (Crosstalk.)

9 ALJ BEMESDERFER: All right. Let's  
10 start with you.

11 Want to move your exhibits into  
12 evidence?

13 MS. TOLLER: Yes, your Honor.

14 We would ask that we move into  
15 evidence OSC T-Mobile's 2 through 11, 15, 27,  
16 and 30.

17 ALJ BEMESDERFER: Is there objection?

18 MS. TAFF-RICE: No, your Honor. We  
19 have no objection to any of those exhibits,  
20 except for Exhibit 30.

21 ALJ BEMESDERFER: All right. All of  
22 those exhibits will be moved into evidence.  
23 The objection to Exhibit 30 will be noted.  
24 I'll rule on it.

25 (Exhibit No. OSC T-MOBILE-02 through  
26 OSC T-MOBILE-11 were received into  
evidence.)

27 (Exhibit No. OSC T-MOBILE 15 was  
28 received into evidence.)

1 (Exhibit No. OSC T-MOBILE 27 was  
2 received into evidence.)

3 (Exhibit No. OSC T-MOBILE 30 was  
4 received into evidence.)

5 ALJ BEMESDERFER: Ms. Taff-Rice, go  
6 ahead.

7 MS. TAFF-RICE: Thank you, your Honor.

8 DISH would like to move Exhibits 1,  
9 -- this should be OSCD-01 through OSCD-12.

10 ALJ BEMESDERFER: Objections?

11 (No response.)

12 ALJ BEMESDERFER: Hearing none, they  
13 are admitted.

14 (Exhibit No. OSCD-01 through OSCD-12  
15 were received into evidence.)

16 ALJ BEMESDERFER: Anything else we  
17 should deal with before we close this  
18 session?

19 (No response.)

20 ALJ BEMESDERFER: Silence is golden.

21 MR. GELFAND: Thank you, your Honor.

22 ALJ BEMESDERFER: Thank you, all. I  
23 appreciate it. It was a very stimulating,  
24 interesting session. And I actually learned  
25 something, which is something I am often not  
26 able to say at the end of the hearing.

27 MR. GELFAND: Thank you, your Honor.  
28 That's a high compliment for a lawyer to

1 hear. So, thank you for that.

2 ALJ BEMESDERFER: We can all go home  
3 and enjoy the evening. We are off the record  
4 now. And this proceeding is closed.

5 (Whereupon, at the hour of 6:08  
6 p.m., this matter having been  
7 concluded, the Commission then  
8 adjourned.)

9 \* \* \* \* \*

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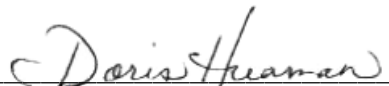
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<hr/> <b>0</b> <hr/>	72:10 74:27	13:4 14:19 15:11,22 22:11,16,20 24:14 28:27 30:20 33:24 64:28 66:6 72:13 73:19 79:14 82:12,18 88:17 94:8 98:22 99:18,22,25 102:16 104:1,2 108:3 117:8 119:16 142:20 143:4 146:18,20 149:26,27 152:4 155:3 158:10,11,19,21 160:16 161:3 165:7 169:11 176:15,17 210:28 213:3 219:25 222:10 227:8,18 228:5,13,26 230:1 237:13 239:11 240:3 241:4 271:27 272:5,21 273:22	<b>27</b> 277:15 278:1 <b>29</b> 172:6 <b>29th</b> 275:8 <b>2:45</b> 160:4 <b>2G</b> 33:1 172:13 <b>2nd</b> 194:11 235:16
<hr/> <b>1</b> <hr/>	<b>15-months'</b> 177:12 <b>15th</b> 275:8,16 <b>17</b> 102:17,24 <b>18</b> 28:24 30:16 103:27 104:16,21 106:10,20 117:8,24 159:16 222:19 <b>18-month</b> 158:12,22 159:25 <b>180</b> 232:7,21 <b>19</b> 82:19,21 102:17,24 <b>1900</b> 93:26,27 95:4,7,9, 13,15,23,27 96:2,4,7,9, 16 97:5 <b>1990s</b> 31:4 <b>19th</b> 160:19 <b>1:00</b> 81:17 <b>1:04</b> 81:18 82:1 <b>1st</b> 183:16 185:8,25 188:21 190:1 191:13 193:11,28 194:13,18 203:25 205:5 228:12 232:19,22 236:2,6 267:20,27 268:6,16 269:3 270:19,26 271:1, 2	<b>2020</b> 107:11 132:16 149:8 176:20 182:24 194:11 228:12 233:26 234:15 235:6,16,21 236:2 270:21,25 <b>2021</b> 25:23 190:9 235:24 267:1 <b>2022</b> 183:16 185:8,25 186:25 188:21 190:1 191:13 193:11 194:1, 13,18 200:10 202:6,15 203:25,26 204:1,11 205:5,10,17 232:20,22 236:6 270:16,17 271:1, 2,12,13 272:7 <b>2023</b> 107:12 149:8 176:20 182:24 197:22 198:7,26 199:9 212:27 213:2 222:3 234:15 267:20,27 268:6,17 269:3 270:19,26 <b>20th</b> 219:24 <b>21</b> 15:22 22:2 88:16 196:11 <b>22</b> 88:16 152:6,19 155:13 184:15,16 196:12 <b>23</b> 119:18,19 120:2 143:19 152:15 221:20 <b>24</b> 142:26 <b>24-month</b> 159:25 <b>25</b> 82:20,21	<hr/> <b>3</b> <hr/> <b>3</b> 18:2,10 92:25 105:17 138:27 140:10,19 219:28 <b>30</b> 32:2 171:3 202:15 277:16,20,23 278:3 <b>30-plus-megabytes- per-second</b> 31:28 <b>30th</b> 202:6 203:26 204:1,11 205:9,17 270:17,25 271:13 <b>3:00</b> 160:5 170:14 <b>3:37</b> 188:6 <b>3G</b> 32:8 33:1 95:4,13 96:16 100:15,17 172:14,21 189:26 190:2,5 208:1
	<hr/> <b>2</b> <hr/>	<hr/> <b>4</b> <hr/>	
<b>01</b> 95:6	<b>2</b> 18:2,10 65:27 92:12 93:11 105:17 111:4 133:22 136:20 146:4 152:2 174:12,27 277:15 <b>2.2</b> 76:19 78:1 <b>2.2(c)</b> 65:12 66:1 <b>2.3</b> 268:20 269:10 <b>2.5</b> 103:3 105:9 220:7 221:2,22 222:13,20 <b>20</b> 15:22 32:2 88:16 152:6,18 155:13 267:14 <b>20-04-008</b> 182:4 233:18 235:14 <b>2018</b> 222:9 <b>2019</b> 11:24,25 12:26	<b>4</b> 13:22 120:21 121:18 136:18 149:15 153:26 155:20 181:10,19 <b>4-</b> 97:1 <b>40</b> 213:5 <b>4:00</b> 188:11 203:19 <b>4G</b> 31:10,20 32:24,27 33:12 201:6 210:23	
		<hr/> <b>5</b> <hr/>	
<b>1</b> 13:18,22 66:2 92:5 111:3 181:12 200:10 270:16 271:12 278:8 <b>1.1</b> 5:9 10:27 11:10 18:14 126:28 127:1,3 167:6 267:9 <b>1.9</b> 93:28 96:9 100:16, 22 <b>10</b> 102:17 151:7 170:15 <b>10-minute</b> 160:6 <b>104</b> 194:20 <b>11</b> 76:1 108:5,26 117:8, 11 212:13 277:15 <b>12</b> 132:16 161:19 <b>12-month</b> 159:25 <b>12/31/21</b> 190:19 <b>1204</b> 161:10 <b>1206</b> 161:22 <b>12:00</b> 76:2 81:18 <b>13</b> 14:20 25:23 117:7 133:7 134:11 <b>1373</b> 142:26 143:12 <b>1374</b> 119:17 143:14 <b>1375</b> 15:4 119:18 120:2 <b>1382</b> 108:5,26 <b>1383</b> 108:5 <b>14</b> 108:6 136:16,19 151:3,7 <b>14-month</b> 159:25 <b>15</b> 16:28 66:28 67:17 70:16 82:20,21 151:21 160:2 227:2 266:25,26 277:15,27 <b>15-month</b> 151:24 168:8 195:16 <b>15-months</b> 67:12,19		<b>5</b> 13:18,22 115:18 144:13 <b>5,000</b> 97:1,2 <b>5-4</b> 271:14 <b>5.2</b> 133:1 134:12 135:20	

PUBLIC UTILITIES COMMISSION, STATE OF CALIFORNIA  
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79:13,24 80:12 130:26 131:16 132:15 135:21 136:14 137:26 142:11 158:25,27 159:10,27 168:4,11,12,15 172:24 173:12 200:2 207:1,8, 14 208:5 227:14 231:17 232:10,28 267:21 268:3,9,10,14,21 269:8, 9 273:19,27	237:18,26 239:14 240:10,17 241:26 242:3,7 266:10 273:28 274:27 275:2,5,13 276:1,17,28 277:6,9,17, 21 278:5,10,12,16,20, 22 279:2	<b>anymore</b> 80:21	<b>aspect</b> 32:6
<b>agreements</b> 145:1 182:17 206:26 228:19 268:1	<b>all-new</b> 77:10	<b>apologize</b> 24:28 30:8 76:13 103:18 125:7 140:8 161:21 213:16	<b>aspects</b> 28:5 200:24
<b>agrees</b> 198:16,20	<b>allegation</b> 11:10 74:8 92:11 93:11 101:21,26 115:15	<b>apparent</b> 5:8 206:25	<b>assertion</b> 13:20 92:12 101:25 106:8 107:5,13 115:16
<b>ahead</b> 70:22 76:7 82:3 121:27 122:13,19 123:8 153:13 278:6	<b>allege</b> 105:18	<b>Apparently</b> 146:28	<b>assertions</b> 10:24 11:4, 8 13:8,10,22 17:28 18:2,9 86:26
<b>air</b> 95:24 205:23	<b>alleged</b> 11:4,7 25:16,21 87:3 92:5,15	<b>appeared</b> 85:20 91:21 179:8	<b>assessment</b> 234:1
<b>alert</b> 145:18	<b>allegedly</b> 10:24	<b>appearing</b> 124:11	<b>asset</b> 27:26
<b>alignment</b> 145:15 206:22	<b>alleges</b> 107:6 115:19 140:25	<b>appears</b> 127:4	<b>assets</b> 104:13 118:2,4
<b>ALJ</b> 7:25,27 8:4,10,14, 21,26 9:2,9,17 10:1,7, 21 19:9,14,21,26 20:3, 9,13,19,28 21:6,12 24:18,25 30:3,6 33:15, 27 34:7,11 62:21 63:20, 24 65:21 69:8,18,27 70:18 71:6,27 72:24,28 75:5,11,26,27 76:6 81:15 82:3,25,27 85:6,7 101:17 106:9,17,24 123:14 124:3 125:5,8, 24 126:11 128:4,22 129:1,7 132:8,12 135:2, 11,14,26 137:8 138:23 139:1,14,27 140:5,9,14 141:14,18 143:14,19 145:17,21 146:2,13,21 147:16,18 148:3 150:8 154:9 156:6 157:20 160:4 164:19 165:9,14 166:6 167:16 168:23 170:13,18 173:15 174:4 176:3,23 180:1 183:8, 25 184:2,17 187:26 188:12 194:8 195:1 198:18 203:19 205:24 211:11,16 213:18,23 219:20 224:11,15,16,27 225:3,9,13,17,22,26 226:5,12,21 236:27	<b>allowed</b> 14:11 81:1 136:18 137:3 154:3,6 156:27	<b>applicable</b> 17:15 77:25 114:3 134:6,15,20 135:24 232:5	<b>assigned</b> 7:25 213:4,6
	<b>alluded</b> 63:10 67:22	<b>application</b> 22:12,17	<b>assistance</b> 18:20
	<b>altering</b> 123:17	<b>applies</b> 156:2,4	<b>assume</b> 99:14 195:28 236:12
	<b>alternatives</b> 193:17	<b>apply</b> 9:26 15:14 155:27	<b>assuming</b> 192:2 209:4 223:6
	<b>amount</b> 25:28 149:20	<b>approach</b> 204:24	<b>assumption</b> 13:24 223:17
	<b>amounts</b> 29:15	<b>approaching</b> 109:18 113:20	<b>Assurance</b> 83:26 84:2 89:23
	<b>analysis</b> 191:11 193:27	<b>appropriately</b> 206:22	<b>AT&amp;T</b> 12:9 172:11
	<b>and/or</b> 5:24 9:4 31:16 111:6 112:16 114:1 130:3 225:28	<b>approval</b> 27:11 29:6	<b>attached</b> 99:16 106:12 132:16
<b>Anita</b> 65:1 124:10	<b>announced</b> 172:12 178:21,25 202:4	<b>approvals</b> 201:1	<b>attachment</b> 66:4 94:6 97:21 99:16 103:28
<b>Annex</b> 66:2	<b>answers</b> 153:5,14 168:18 169:25 272:24	<b>approved</b> 181:23 211:1 233:21	<b>attempt</b> 21:7 68:10
<b>anniversary</b> 133:19	<b>antenna</b> 203:10,11 204:8	<b>approving</b> 182:3	<b>attempted</b> 180:14
<b>announced</b> 172:12 178:21,25 202:4	<b>antennas</b> 201:6,26	<b>approximately</b> 23:2 30:16 70:14 194:20 228:23	<b>attention</b> 94:27 140:18 142:17 145:24 151:27 170:28 189:24
<b>answers</b> 153:5,14 168:18 169:25 272:24	<b>anticipated</b> 14:26 118:9,25	<b>April</b> 221:20 233:26 235:6	<b>attest</b> 9:2,9,18 19:21,26 20:3,9,13,19,28 21:7 224:18 225:5,9,13,17, 22,26 226:5,13
<b>antenna</b> 203:10,11 204:8	<b>anticipating</b> 161:15,26	<b>area</b> 134:6,15,21 135:24 270:5,7	<b>attestation</b> 10:5 225:4
<b>antennas</b> 201:6,26	<b>antiquated</b> 13:26	<b>areas</b> 7:23 70:12 271:26	<b>attestations</b> 8:5
<b>anticipated</b> 14:26 118:9,25		<b>argue</b> 191:21 241:27	<b>attested</b> 267:8,9
<b>anticipating</b> 161:15,26		<b>argument</b> 269:4 273:13 274:1	<b>attorney</b> 228:18
<b>artifice</b> 127:8 167:12		<b>arrangement</b> 23:7 24:3,7,10 25:10 63:9 69:2 79:17 80:13 90:7 156:26 238:7	<b>attorneys</b> 228:21 229:17
			<b>attractive</b> 212:4

<b>auctioned</b> 93:24	<b>basically</b> 23:7 230:9,18 238:2	17,21 278:5,10,12,16, 20,22 279:2	23 234:25 236:2 270:2, 11 271:7
<b>audio</b> 34:4	<b>basis</b> 10:26 11:10 18:10 33:10,12 92:9 137:15 178:3,10 180:2, 8,19 230:7	<b>benefit</b> 110:9 199:6 277:1	<b>Boost's</b> 91:17 114:4 120:8
<b>August</b> 25:23	<b>bear</b> 273:4	<b>benefits</b> 12:11 24:17 25:8 26:2 27:13,15 28:2,25 142:7 145:3 197:10,12,13 199:5 200:7 201:4 207:27 210:20	<b>Boost/sprint</b> 235:1
<b>automatically</b> 232:8, 24 270:9,27	<b>bears</b> 11:26 115:28 273:4	<b>biased</b> 19:2	<b>boss</b> 229:14
<b>average</b> 136:16	<b>BEAS</b> 133:26	<b>big</b> 33:3 97:20	<b>bottom</b> 92:26 172:5 179:25 196:11 197:19
<b>avoidance</b> 78:25	<b>beautifully</b> 12:14	<b>bigger</b> 160:23	<b>bound</b> 129:26 138:9 141:3,9,15,25,28 144:16
<b>avoided</b> 192:19	<b>begin</b> 34:12 102:13 108:7 110:22 173:3 213:24 242:8	<b>billing</b> 23:12	<b>box</b> 152:7
<b>aware</b> 68:10 70:18,19 127:20 128:10,24 167:21 169:2 170:1 180:22 202:4 227:23 228:4 238:17	<b>beginning</b> 25:1 110:25 124:21 152:18 155:26 184:19 200:25 270:21	<b>billions</b> 16:23	<b>boxes</b> 203:6
<b>AWS</b> 103:3 220:10	<b>begins</b> 110:9 117:11 142:26	<b>bills</b> 191:24	<b>branding</b> 109:17
<hr/> <b>B</b> <hr/>			
<b>back</b> 26:28 30:6,10 34:7 74:15 75:24 79:10, 21 82:9 88:11 94:7 97:15 98:15 101:16 103:19,20 104:1,2,19 111:18 112:14 115:16 116:1 131:19 133:22 148:23 149:13 155:12 170:18 173:7,21 197:17 210:27 222:9,19 230:14 231:6,16 232:8 233:14 237:13 266:17 272:8 273:21	<b>behalf</b> 165:25	<b>binary</b> 95:6 209:11	<b>break</b> 10:20 11:21 30:1 75:28 76:4,8,13 79:11 81:14,16 123:16 125:9 160:6 170:15,23
<b>background</b> 12:21 33:17,22 104:4	<b>behooves</b> 162:6	<b>bit</b> 12:1 13:16 121:15 145:28 148:18 168:18 206:17 211:19 221:24	<b>briefing</b> 71:1 75:21 125:21 273:17 274:18 275:7,16
<b>balance</b> 152:10 163:6	<b>belief</b> 165:1 175:27 230:7 269:18	<b>blanket</b> 220:3	<b>briefly</b> 124:12
<b>ball</b> 140:1	<b>believed</b> 68:22 154:27 236:13	<b>block</b> 105:3 212:23	<b>briefs</b> 71:24 227:21 275:7,10,25 276:27
<b>band</b> 93:23 95:27 96:4, 11 100:16 105:11	<b>believes</b> 147:28 148:21 167:22,26 177:1 178:8 198:2 269:8	<b>blocks</b> 5:28 221:4	<b>bring</b> 25:8 27:21 142:6, 22
<b>banded</b> 93:25	<b>believing</b> 269:12	<b>Blum</b> 65:17,19,23 224:17,22,27 226:19, 26,28 227:5 228:5 233:16 237:20 238:17 240:8,23 241:18 266:11 267:2 268:4 269:19 271:18 272:24 273:11 274:1	<b>bringing</b> 28:8
<b>base</b> 83:15 142:9 162:14 163:28 181:1 184:24 186:14,16 228:2,8 229:19	<b>Bell</b> 22:4	<b>Blum's</b> 274:21	<b>broadband</b> 28:9,10
<b>based</b> 10:23 13:23 19:22 122:22 147:20 234:22	<b>Bemesderfer</b> 7:22,27 8:4,10,14,21,26 9:2,9, 17 10:1,7,21 19:9,14, 21,26 20:3,9,13,19,28 21:6,12 30:3,6 34:7,11 62:21 65:21 69:8,18,27 70:18 71:6,27 72:24 75:5,11,26 81:15 82:3, 25 85:6 101:17 123:14 124:3 188:2 205:27 211:13,16 213:18,23 219:20 224:16,27 225:3,9,13,17,22,26 226:5,12,21 266:10,16 273:28 274:27 275:2,5, 13 276:1,17,28 277:6,9,	<b>body</b> 12:12	<b>broadly</b> 156:3
<b>baseless</b> 180:7		<b>boost</b> 5:3,12,15,22,27 12:24 15:15,25 16:12, 14 17:2,19 23:3 24:21 64:3 78:7,13 84:3,5 85:17,24 87:6 90:17,19 91:8 93:1 109:12 111:5 113:18 114:8 115:22 118:19 130:1 140:27 144:3 149:6 155:28 156:11 163:8,13,15,28 172:22 176:18 183:17 184:8,24,28 186:10,13, 16 191:1,3,19,20 192:3 227:12 228:2,7 229:19,	<b>broke</b> 184:26
<b>bases</b> 112:4			<b>brown-orange</b> 95:11
			<b>build</b> 200:6
			<b>build-out</b> 5:17 6:1 87:26 102:1
			<b>building</b> 29:7 104:14 200:26 201:1 277:1
			<b>built</b> 87:19
			<b>bullet</b> 140:18,19
			<b>business</b> 12:24 16:2 23:12 89:15 127:5 241:3,8
			<b>busy</b> 29:9,16 30:14

buy 231:14 233:9

byte 33:7

C

calculation 273:21,25

California 16:23 22:4 25:9 28:1,16 94:22 96:25 97:8 169:4 194:4 196:21 199:19 200:27 203:16

Californians 12:8,17 227:16

call 11:1,19 18:18 32:17 33:8 188:5 193:11,16 194:2 211:18 235:23

called 21:14 93:26,27 226:19

calling 18:16 32:10

calls 32:7 186:28 188:22 190:11 191:13 192:27 229:8

camera 19:13

candid 11:13 14:15 122:17,24 123:3,4 138:11 269:19

canned 153:4,8

capabilities 27:28 220:17

capability 27:21

capable 29:8 76:26,28 77:11,13,22 78:8,14 210:23

capacity 28:4 221:7

capture 196:16

captured 234:1

captures 234:7

card 77:9,14 185:10,27 186:27 187:19 188:18

care 23:13

careful 110:1

carrier 134:6,14,20 135:23 136:2,6

carriers 95:24,28 96:1

carry 29:5

carrying 30:23

case 12:19 19:17 32:11 64:7 85:19 98:8 99:16 111:5 115:8 123:5 130:20 149:21 163:12 164:1 165:6 171:23 178:18 187:13 203:9 275:23

cases 187:18,20 201:3

catalog 75:24

categories 13:14

category 17:28

caveat 10:4

CDMA 5:1,11,15,28 13:26 14:7,12 15:12 16:6,11,26 17:7,12,20 18:4,8 30:27 31:1,2,12, 15,19,23,24 32:4,11,17, 21,27 33:13 66:23 67:25,28 68:3,7,14,20, 23 69:3 70:9 77:6 78:12 79:5,26 80:20 87:5,18, 28 88:5,8,12,25 89:2,19 90:3 91:12,25 92:7,18 93:1,14 95:23 96:14,16 97:6,9,24 98:5 100:15, 18 101:3 105:20 106:1 111:6,27 115:1,10 116:4,19 117:16 118:20 120:24 129:12,16 130:20 134:5,14,20 135:23 136:1,5,11 137:5,23 138:18 142:8 144:17 152:24 153:24 155:4,18 156:16,18,20 157:6,16,18 158:4,12, 22,28 159:8,15,21,28 160:10 166:2,18 167:24 172:21 175:2,6,28 177:9 183:3,15 185:7,8, 24,25 186:6,26 188:17 189:18,26 190:2,5,18 191:7,12 192:22 194:12,17 195:9 196:14 197:21 198:7,26 199:8 200:9,22 202:28 203:24 204:4,27 205:5,20 206:9 208:3,18 210:2,5, 8 221:28 222:27 223:6, 16 229:20,24,25 230:4, 10,12 231:8 234:7,25, 28 235:7,12,19 236:5,8, 15 238:3,7,23,25 239:20,28 240:5 267:19,27 268:5,16 269:2 270:1,2,11,16 271:11,12,17,22 272:2, 12

ceiling 175:23

cell 23:23,25 94:21 96:4,21,22,24 97:8,23 108:13 111:10 112:24 113:13 199:28 201:8, 24,25 208:4

CEO 99:20

certification 236:25

cetera 78:6 111:20 158:5 191:24 197:13

chairman 229:15

challenge 7:6

challenging 31:23

chance 76:11 97:15 104:19

change 77:14 85:27 144:28 145:13 172:24 173:12 180:27 193:5

change-outs 114:2 163:27

changed 77:15 130:28

characterize 156:1 239:4

characterized 155:4

Charlie 229:14

chart 101:10 103:12,13, 22 105:3 117:13 146:20 220:20 221:5,18 222:22

chat 24:19

check 62:27,28 104:19 151:2 170:5 181:27 182:1 187:27

Chief 98:28 99:8

chose 23:27 125:28 135:9

churn 162:8,9

circumstance 73:14 208:24 211:2

circumstances 70:7 187:23

cite 268:17

cited 107:22,23

claim 237:16

claiming 239:22

claims 196:13

clarification 9:26 34:5 93:8 183:24 197:27 275:22

clarify 124:24 125:14 126:7,17 204:25

clarity 140:22 143:3

clause 67:2

clear 15:10 16:15 26:9 66:19 68:18 78:2 79:4 80:1,9,22 85:22 90:15 91:24 110:15 119:1 121:24 137:27 151:15, 18 153:4 166:11 177:6, 13 188:26 203:23 204:26 220:6 234:22

client 10:15 213:16,19 266:17

client's 213:13

close 11:1 23:18 177:12 278:17

closed 30:17 103:15 279:4

closing 133:20,28 220:3

closure 160:3 205:1

co-founder 229:15

coached 20:1

coaching 8:23 225:20

Code 31:5

cognisant 126:6

colleagues 82:24

collection 94:4

colloquy 182:28

<b>color</b> 95:2,11	9 169:12,23 170:8,26	<b>communications</b> 236:19,22	<b>completing</b> 76:12 123:9 224:1
<b>colored</b> 95:22	175:21 176:16 177:1	<b>companies</b> 27:23 138:1 209:2	<b>completion</b> 168:7
<b>column</b> 95:3 96:13 212:21,22,27	178:2,14 179:4 180:15	<b>company</b> 12:2,14 74:23 88:4 99:5 102:10 197:23 198:8	<b>complex</b> 230:13
<b>columns</b> 94:28 95:1, 16,21,26 96:15 97:5	182:2,3,14 184:19	<b>company's</b> 126:19	<b>complicated</b> 276:7
<b>combination</b> 12:4 24:16 27:20 29:5 164:5 181:6 212:1 220:26 221:2,10,22 223:13 268:19	195:7,24 196:23 199:2, 20 200:4 210:1,19,26 211:28 226:10 227:14, 25 233:21 235:5,13 238:15,19 267:9,25 269:14,16 273:3,6,23 274:8 279:6	<b>compare</b> 31:20	<b>complied</b> 17:17 18:14
<b>combine</b> 112:3 130:4	<b>Commission's</b> 12:26 18:17 94:15 126:3 127:21 132:4,7 140:23 146:5 148:12 153:16 169:15 170:11 181:23 234:3	<b>comparison</b> 31:9	<b>compliment</b> 278:28
<b>combined</b> 104:28 106:2 142:7 220:17	<b>Commissioner</b> 6:12, 25 7:18,21,25,28 10:13 19:7 22:26 63:4,27 76:15 180:25 188:3 205:25 206:2,5,20 207:15,26 208:21 209:16 210:6 211:8,11 276:17,20	<b>compatibility</b> 84:11 85:26	<b>complimentary</b> 212:5
<b>combining</b> 27:26 104:12	<b>Commissioners</b> 103:19	<b>compatible</b> 15:19 162:15 185:9,26 186:26 187:14 188:18 192:18 193:20 209:8 211:6	<b>compound</b> 124:28 137:6
<b>commences</b> 110:28	<b>commit</b> 90:18 116:18 240:14	<b>compelling</b> 12:20	<b>comprehensive</b> 11:14
<b>commencing</b> 133:27	<b>commitment</b> 68:5,13 114:27 131:5 133:21 137:13 144:20 186:9 187:7 195:8,11 220:1, 23 221:16 234:8 236:14 237:16	<b>compensate</b> 23:8	<b>compromises</b> 175:3
<b>commend</b> 106:26	<b>commitments</b> 15:24 16:3 29:11,18 83:20,21 89:5,11,16 90:24 117:26 145:1 152:28 177:21 188:27 219:23 222:6,11,16 234:2	<b>competent</b> 125:18	<b>conceal</b> 80:23
<b>comment</b> 88:19 159:19 180:21 181:3	<b>committed</b> 23:21 26:5 27:14 28:13 116:3 119:8 210:16	<b>competition</b> 28:8,19, 22	<b>conceivably</b> 71:19
<b>commentary</b> 173:9	<b>common</b> 192:6 203:10, 11 204:8,10 205:1	<b>competitive</b> 12:8 27:25 236:9	<b>concept</b> 198:17
<b>Commission</b> 5:1 9:14 10:25 11:23,27 12:2,10, 20,27 13:2,6,25 16:18 17:5,13,27 18:3,8,13, 20,27 19:4,17 20:26 22:6 24:14 25:6,20 26:1,9,13 27:2,17 28:7, 27 29:13 30:20 31:19 62:25 64:25,27 66:3,7, 17 70:26 73:19,20 75:19 77:27 79:1,17 80:24 81:1,10 82:11 85:10,20 87:4,12,15 89:7 90:9,14 92:3,5,17, 22 93:16 94:17 96:7 97:7 98:1,14,19,22 100:11 101:1 102:4 103:18 104:26 107:17 110:18 113:22 115:25 116:23,26 117:9 121:21 122:18,26 124:17,25 125:16 126:8 127:4,7, 11,12,24 128:12 129:3 148:20 151:19 152:5 153:6,15,20 154:27 158:19 160:8,18 164:28 165:5,28 166:17 167:8,	<b>communicated</b> 68:22 81:3 202:9	<b>compiled</b> 147:1	<b>concluded</b> 123:21,27 279:6
	<b>communication</b> 8:19 21:2,3 93:23 225:15	<b>complete</b> 5:6,22 11:20 14:5,16,27 15:6 17:2, 11,14 75:24 90:2 112:2, 23 115:22 116:8 118:10,15 119:2 121:5, 26 122:19 129:12,16 138:10,12 140:27 141:4,26 145:6 147:2 188:10 192:4,23 231:2	<b>concerned</b> 236:1,6,9
		<b>completed</b> 6:19 78:9, 11 80:14 111:12 113:8, 10 123:8 145:10 149:7 176:19	<b>concerns</b> 7:22
		<b>completely</b> 73:25 124:26 126:5 127:6,17 173:12 202:14 232:18 271:3	<b>conclude</b> 18:13
		<b>completeness</b> 85:1 125:2	<b>concluded</b> 123:21,27 279:6
			<b>conclusion</b> 6:14,27 165:28 273:26
			<b>concurrent</b> 275:24
			<b>conditions</b> 145:16 196:22
			<b>conduct</b> 80:10 122:2 142:4 151:14 166:25 167:1 177:17 199:24
			<b>conducted</b> 207:22
			<b>conducts</b> 108:17
			<b>confidence</b> 121:23
			<b>confident</b> 15:5 121:4, 25
			<b>confidential</b> 29:2,20 34:2,9 65:4,6,9,17 94:8, 9,11 101:8 104:7 106:12,19,21 197:18 198:16,17 221:13 224:24 238:28 241:7, 10,13,24,27 242:5
			<b>confidentiality</b> 213:10

<b>config</b> 95:12	190:9 191:14 213:19	26 203:26 205:1,7,10	174:3 183:23 193:22
<b>configuration</b> 95:15, 18 203:17	230:16,21 231:7 235:18 239:20,28 270:6 272:12	206:20 220:8,9 221:21 229:5 230:22,23 231:18 232:21,22 233:2,4 235:2,3 236:16 238:4,5, 26 267:6,28 268:1,2 271:24 272:10 274:22	237:11 241:25 274:26, 28 275:28 276:4 277:8
<b>confirm</b> 182:5,11 212:28	<b>continued</b> 117:27 231:25	<b>correction</b> 143:16 213:5	<b>cry</b> 150:6
<b>confused</b> 127:25	<b>continues</b> 146:26 196:11 271:23	<b>correctly</b> 134:1,7 153:1 154:1,17 175:24 182:25 212:28 213:7	<b>Cullen</b> 229:16
<b>confusing</b> 69:11	<b>continuing</b> 164:25	<b>cost</b> 197:22 198:8 199:8 201:16 238:24	<b>culmination</b> 25:7
<b>conjunction</b> 177:10	<b>contract</b> 114:11 167:2, 27	<b>costly</b> 239:27 240:4	<b>current</b> 95:3 101:12 197:20
<b>connection</b> 34:4 73:2, 5 266:24	<b>contractual</b> 24:6 68:5 69:1 156:24 177:20,21	<b>counsel</b> 6:13,14,15,26, 27,28 33:16 72:25 123:24 128:4 154:10 219:25 241:5 274:24	<b>cus-</b> 114:12
<b>consequence</b> 269:9 270:17	<b>contractually</b> 23:21	<b>country's</b> 220:4	<b>customer</b> 5:15,23 23:12 28:2 83:15 109:11,13 112:4 113:15,18 115:23 137:15 140:27 142:8 145:2 150:1 155:5 158:12,23 159:16 160:10 162:14,24 163:11,13,27 164:2,26 165:2,23 166:2 167:23 170:9,27 175:28 176:12 182:22,23 184:24 186:13,26 188:16,17,19 191:6,7,22 193:16 211:5 224:1 228:2,8 229:19 236:16
<b>considerable</b> 223:25	<b>Contrary</b> 196:13	<b>court</b> 7:6 10:18 24:5 75:18,28 76:2,15 83:7 85:2 110:8 140:2 145:19 160:14,21,22 161:4 276:21,24	<b>customer's</b> 23:9
<b>considered</b> 73:12,13 241:24	<b>control</b> 15:16 206:18	<b>cover</b> 66:8 82:19 111:22	<b>customer-base</b> 109:27
<b>consistent</b> 138:15 232:10 233:10 238:6	<b>conversations</b> 229:2 240:27	<b>coverage</b> 28:14 210:24 220:14,23 221:25 222:5,7	<b>customers</b> 5:3,12,18, 27 14:7,12,25,28 15:7, 13,15,19 16:6,12 17:2, 19 23:3,5 31:14 64:3 70:10 75:1 76:25 77:8, 21 78:8,10,13 80:7,8,9 83:3,19,26 84:2,3,4,5 85:18,24,28 87:6 89:3, 19,22 90:5,17,19,27 91:4,8,13,14,17,19 92:7 93:1 107:9 108:15 109:9 110:6 111:5,6,7 112:8,21 113:24,27 114:5,6,14,15,17 115:2 118:8,11,15,18,19,20, 25 119:9,25 120:8 121:5,27 122:10,13 130:1,2 136:11 138:18 144:3 145:15 149:6 150:22 151:16 155:28 156:4,12 157:1 163:6,8, 12,15,26 172:14,22,26 175:4 176:18 183:18
<b>construct</b> 17:9 80:24 119:5 178:12	<b>convey</b> 90:10 105:13	<b>couple</b> 83:8 84:26 93:18 96:15 98:24 102:11 108:24 110:16 117:5 223:21 276:11	
<b>constructing</b> 24:9	<b>conveyed</b> 92:3,4		
<b>consult</b> 213:15	<b>COO</b> 99:23		
<b>consume</b> 153:16	<b>cooperate</b> 84:14 206:12		
<b>consumer</b> 28:2 32:14 169:4 197:12	<b>copied</b> 102:27		
<b>consumers</b> 28:5 31:14	<b>copies</b> 7:14		
<b>contained</b> 219:24	<b>copy</b> 102:14 104:20 139:24 196:4 212:17		
<b>contemplated</b> 90:13	<b>copying</b> 9:6 20:16 226:2		
<b>content</b> 65:6	<b>core</b> 274:6		
<b>contentious</b> 276:8	<b>Corporation</b> 226:19 266:28		
<b>contents</b> 148:11,15,25	<b>correct</b> 22:23,24 24:5,6 30:25 32:21 77:2 78:22 84:5,7 86:15,16 91:5,8, 15 96:8,9,18 97:6,10 100:19,22,23,25,26 103:16 106:14 108:18 113:5,6 119:26 121:16 125:20 129:3,12 134:21 136:22 148:13 149:15 150:13 153:7 154:28 155:1 162:2 166:18 175:11 178:28 185:13 187:1 188:23 190:19 194:10 195:13,19,22 198:2,4 201:19 202:7,		
<b>context</b> 11:28 13:7 107:23 147:2,22 150:17 151:12 152:10 154:7 156:2 164:14 177:16 224:5 236:1			
<b>contexts</b> 74:20			
<b>contingency</b> 130:23 136:18 144:28 145:12			
<b>contingent</b> 159:1			
<b>continue</b> 62:22 65:25 84:8 90:4 100:14 108:15 117:15 137:4 145:21 157:22 170:20			

184:9,28 185:3,5 186:5, 10,20 187:14 189:17 191:1,11,12,16,18,20, 26 192:11,13,20,22,26 193:10,13,27 202:23 206:10,14,21,27 207:2, 6,28 208:18,25 209:4, 28 210:3 234:12,17 236:7,8 270:3 271:7	102:16 108:3 117:8 119:16 142:20 143:4 146:19 149:27 158:11, 20 160:15,18 161:3 169:11 176:15 200:4 210:28 227:8,18 230:1 239:11	<b>delivering</b> 8:6 12:14 <b>delivery</b> 77:6 <b>demonstrate</b> 12:13 <b>demonstrating</b> 102:8 <b>denial</b> 9:12 20:24 226:8 <b>denotes</b> 94:25 95:9,14, 26 96:3 <b>densify</b> 222:14 <b>department</b> 12:23 16:17 17:26 22:22 24:4, 8 25:11 63:8,16 68:11, 17 69:2 71:11,12,21 74:2 78:17 79:24 116:17 120:16 130:27 146:7 159:5 167:3,28 168:2 177:8,23 187:7 188:28 199:2 200:2 207:9 208:6 210:11 <b>depend</b> 72:18 <b>dependent</b> 172:16,23 187:3 190:4 202:18 <b>depending</b> 187:1 188:22 190:11 236:15 <b>depends</b> 200:13,14 203:13 222:4 <b>deploy</b> 103:1 222:12 <b>deployed</b> 32:27 95:7 100:6,13,22 103:7 <b>deploying</b> 221:9 <b>deployment</b> 101:13 197:26 198:12 <b>deputy</b> 229:16 <b>describe</b> 29:1 202:25 <b>describes</b> 102:20 268:9 <b>describing</b> 269:7,21 <b>description</b> 201:25 269:23 <b>design</b> 17:24 <b>designed</b> 114:16 <b>desires</b> 71:15 <b>detail</b> 28:28 31:18 109:23 189:23	<b>detailed</b> 99:13 192:16 <b>details</b> 94:20 131:18 231:12 <b>determine</b> 120:13 144:8 274:7 <b>develop</b> 18:10 <b>device</b> 76:26 77:1,4,10, 11,12,15,22 78:8,13 85:27 185:10,27 186:7, 27 190:4,8 211:6 <b>devices</b> 15:20 17:1,18 80:5 <b>difference</b> 32:25 269:11 <b>differently</b> 13:16 <b>difficult</b> 198:14 200:28 <b>direct</b> 11:20 21:17 62:22 76:12 140:17 142:16 145:23 151:27 153:17 165:20 226:24 <b>directing</b> 155:12 <b>direction</b> 34:10 213:22 242:6 <b>directly</b> 116:7 208:21 237:4,8 <b>directs</b> 5:7 <b>disagree</b> 174:21 179:28 180:11 223:4 <b>disavowed</b> 16:14 <b>disclose</b> 76:11 93:15 <b>disclosed</b> 16:18,19 73:18 74:14 75:8 98:18 100:28 101:4 106:4 129:20 <b>disclosure</b> 75:25 <b>disconnected</b> 208:26 211:6 <b>discretion</b> 13:28 <b>discuss</b> 13:3 79:18 <b>discussed</b> 66:24 122:23 123:17 141:9 145:4 166:15 167:6 208:10,21 238:10 240:24
<b>customers'</b> 84:10 199:19 <b>cut</b> 74:24 274:20	<b>decide</b> 18:28 223:11 <b>decided</b> 106:20 115:3, 11 136:5 147:11 <b>deciding</b> 18:21 <b>decision</b> 18:17 172:18 175:1 182:2,4,10 204:14,24 205:12 233:18 236:10 <b>deck</b> 104:5,10,11,16,21 <b>declaration</b> 98:21,27 99:7 100:2 <b>decommission</b> 110:27 150:22 200:17 210:8 <b>decommissioning</b> 23:24 109:4 111:10,15 112:15,24 113:3,12 <b>decorum</b> 8:22 225:19 <b>deemed</b> 9:14 20:25 226:10 <b>defending</b> 74:9 <b>defined</b> 159:26 <b>definition</b> 5:5 159:23 234:18,21 <b>degradation</b> 5:5 <b>degraded</b> 109:19 113:21 182:23 206:14 234:13 <b>delay</b> 13:25 197:21 198:7,26 <b>delayed</b> 146:27 <b>delaying</b> 196:14 <b>delays</b> 198:28 <b>deliberate</b> 110:1 <b>deliver</b> 13:1 27:12,13, 24 145:3 196:19 221:23 222:7	<b>delivering</b> 8:6 12:14 <b>delivery</b> 77:6 <b>demonstrate</b> 12:13 <b>demonstrating</b> 102:8 <b>denial</b> 9:12 20:24 226:8 <b>denotes</b> 94:25 95:9,14, 26 96:3 <b>densify</b> 222:14 <b>department</b> 12:23 16:17 17:26 22:22 24:4, 8 25:11 63:8,16 68:11, 17 69:2 71:11,12,21 74:2 78:17 79:24 116:17 120:16 130:27 146:7 159:5 167:3,28 168:2 177:8,23 187:7 188:28 199:2 200:2 207:9 208:6 210:11 <b>depend</b> 72:18 <b>dependent</b> 172:16,23 187:3 190:4 202:18 <b>depending</b> 187:1 188:22 190:11 236:15 <b>depends</b> 200:13,14 203:13 222:4 <b>deploy</b> 103:1 222:12 <b>deployed</b> 32:27 95:7 100:6,13,22 103:7 <b>deploying</b> 221:9 <b>deployment</b> 101:13 197:26 198:12 <b>deputy</b> 229:16 <b>describe</b> 29:1 202:25 <b>describes</b> 102:20 268:9 <b>describing</b> 269:7,21 <b>description</b> 201:25 269:23 <b>design</b> 17:24 <b>designed</b> 114:16 <b>desires</b> 71:15 <b>detail</b> 28:28 31:18 109:23 189:23	<b>detailed</b> 99:13 192:16 <b>details</b> 94:20 131:18 231:12 <b>determine</b> 120:13 144:8 274:7 <b>develop</b> 18:10 <b>device</b> 76:26 77:1,4,10, 11,12,15,22 78:8,13 85:27 185:10,27 186:7, 27 190:4,8 211:6 <b>devices</b> 15:20 17:1,18 80:5 <b>difference</b> 32:25 269:11 <b>differently</b> 13:16 <b>difficult</b> 198:14 200:28 <b>direct</b> 11:20 21:17 62:22 76:12 140:17 142:16 145:23 151:27 153:17 165:20 226:24 <b>directing</b> 155:12 <b>direction</b> 34:10 213:22 242:6 <b>directly</b> 116:7 208:21 237:4,8 <b>directs</b> 5:7 <b>disagree</b> 174:21 179:28 180:11 223:4 <b>disavowed</b> 16:14 <b>disclose</b> 76:11 93:15 <b>disclosed</b> 16:18,19 73:18 74:14 75:8 98:18 100:28 101:4 106:4 129:20 <b>disclosure</b> 75:25 <b>disconnected</b> 208:26 211:6 <b>discretion</b> 13:28 <b>discuss</b> 13:3 79:18 <b>discussed</b> 66:24 122:23 123:17 141:9 145:4 166:15 167:6 208:10,21 238:10 240:24
<b>D</b>			
<b>D.20-04-008</b> 181:21 182:14,19 <b>damage</b> 109:26 <b>data</b> 31:13,24,26 32:23 33:4 95:26 104:8 105:3 142:10 <b>date</b> 88:1 133:20,28 175:7 186:8,22,24 194:15 195:2 200:16 203:28 230:24 <b>dated</b> 25:22 132:15 210:22 266:28 <b>day</b> 10:20 69:13 70:2 71:18 75:4 166:24 185:12 186:1,25 276:24 <b>days</b> 160:17 194:20 232:7,21 <b>de</b> 191:16 192:28 193:9 <b>deadline</b> 15:1 118:12, 16 119:3,4 122:13 123:9 159:2 222:3 <b>deal</b> 154:11,12 160:3 168:8 170:3 210:28 278:17 <b>dealing</b> 24:26 <b>debate</b> 72:8 <b>decades</b> 96:12 <b>December</b> 11:25 12:26 13:4 14:19 15:3,11,22 22:16,20 24:13 25:3,12 33:24 64:28 66:5 72:13 73:19 82:12,17 85:21 88:17 90:14 94:8			

<b>discussing</b> 82:13 121:11 131:8 170:24	273:1,9,13 275:12,14, 25,27 276:2 278:8	189:19 221:13 267:1,15	<b>efficiency</b> 32:26 33:3,6
<b>discussion</b> 65:11 68:19 107:3 110:25 135:5 149:1 151:22,23 164:23 165:18 200:3 206:11 210:17 223:25 224:26 235:7,22 266:13	<b>DISH's</b> 5:13 13:28 18:23 64:2 73:3,14 78:6,15 80:8 85:18 87:7 88:5 89:24 90:20 92:8 147:10 151:15 154:5 163:7 174:26 175:3 186:17 187:3,4 188:25 195:25 196:5 226:28 239:17	<b>documentation</b> 16:20 159:3	<b>efficient</b> 33:8,13
<b>discussions</b> 116:16 156:24 230:8 233:11 234:23 235:11 237:6	<b>Dish/boost's</b> 172:26	<b>documented</b> 131:11	<b>effort</b> 26:6 80:23 105:27 179:9 193:7
<b>Dish</b> 5:21 6:13,15,19, 21,24,28 12:24 14:8 15:17,26 16:11,17,26 17:1,4,8,16,17,26 18:15,18,19 23:3,8,11, 17,22,26 24:7 25:11 63:10,14,15,18 64:11, 18 65:2,13 66:11,21,25, 27 67:4,11,12 68:11,16, 21,28 69:4,25 72:19,25 73:7 74:28 76:21 77:17 78:3 80:3,4,6,11,17 83:23 84:9,14,18 85:22 86:3,9 87:19,26 88:5 90:1,15 91:23 107:22 114:8,14,27 115:3,9,21 116:7,17 118:2,4 120:17 123:24 124:12 130:26 131:10,24 132:9 136:14,17 137:16,27 139:26 140:26 142:3,4, 11 144:11,21 145:4,25 146:4 150:27 151:21 155:28 156:22,28 158:25,28 159:4,11 160:2 163:13 164:6 167:3,21,26,27 168:10 171:1 172:16 174:8 175:5 177:7,22 179:18 182:17 185:2 186:9,18 187:3,12,17 188:24 191:1,19 192:3 194:11 195:4,11,16,17,20 200:1 206:13,18,20 207:5,25 208:5,6,7,18 209:21 210:14,15 211:2 226:19 227:2,20 228:3, 7 229:14,15,17 230:24 231:14 232:20 233:24 234:19 235:5,20,26 236:12,13,15 237:7,15, 24 238:3,7,18 239:26, 27 240:3 241:4 266:27 267:22 269:8 272:28	<b>DISH'S</b> 196:13	<b>DOJ</b> 17:4 71:15 83:19 89:5 144:11,21 145:4 152:27 182:18 199:21 227:12 228:19,22	<b>efforts</b> 29:4
	<b>dismay</b> 26:11	<b>dollar</b> 199:10	<b>electronic</b> 132:2,26
	<b>display</b> 65:11	<b>dollars</b> 16:24	<b>element</b> 102:9
	<b>dispositive</b> 14:18	<b>double</b> 101:16 116:1	<b>elements</b> 22:28 23:11, 16 24:10 25:13 81:2 131:18 148:15,20 222:15
	<b>dispute</b> 71:5	<b>doubt</b> 18:22 67:23 72:25 79:22 80:2,16 100:27 122:17,23,28 123:2,5 241:15	<b>eliminate</b> 67:23
	<b>distinct</b> 77:6	<b>DOW</b> 78:25	<b>email</b> 21:2
	<b>distinction</b> 157:14	<b>drafts</b> 229:3	<b>employ</b> 30:26
	<b>District</b> 160:21,22	<b>dramatically</b> 12:6	<b>employed</b> 21:23
	<b>divest</b> 12:23 118:1,3	<b>draw</b> 94:27 157:14 165:28 189:24	<b>employee</b> 197:12
	<b>divested</b> 15:14 16:7 23:4 89:20 90:5,28 91:6,18 156:5	<b>drive</b> 190:25	<b>employers</b> 91:23
	<b>divesting</b> 23:2	<b>driving</b> 32:14	<b>enable</b> 135:21
	<b>divestiture</b> 12:28 13:3 15:25 16:1 22:21,26 23:1,16 24:10 25:10,13 26:4,8,15 63:7 79:16 80:8,27 83:3 84:12 85:16 89:14 90:12 117:18,26 131:5 137:11 139:7 164:5 208:17 227:13 228:2,7,10,11	<hr/> <b>E</b> <hr/>	<b>enclosure</b> 203:8,13
	<b>dividing</b> 13:13	<b>earlier</b> 77:7 82:13 88:11 91:7,10 101:8 103:13 116:12 131:12 136:25 137:10 149:19 159:4 166:15 167:6 187:18 199:12,27 200:15,22 206:11 208:3	<b>encompass</b> 150:21
	<b>division</b> 16:15 31:5	<b>early</b> 230:8 238:23,25	<b>end</b> 5:2 10:20 15:9 17:22 62:20 66:16 79:6 102:1 122:6 137:2 166:10 190:8 194:23 209:25 219:18 235:24 266:9 278:26
	<b>document</b> 65:4,7 80:27 82:24 86:18 94:2, 9,14,18,20 96:23 97:28 98:8 100:12 107:1 108:27 120:3 131:9 132:4,7,26,28 134:25 135:5,8 139:22,28 145:27 146:1,13,15,22, 26 161:7 171:9,22 173:5,8 174:16,19,25 175:15 185:21,23	<b>earth</b> 156:25	<b>ended</b> 22:19
		<b>easier</b> 148:27	<b>endurance</b> 276:22
		<b>effect</b> 196:15	<b>enforce</b> 7:8 168:6
		<b>effectively</b> 77:4 86:1 163:26	<b>engage</b> 21:1
		<b>effects</b> 22:21	<b>engineer</b> 69:28
		<b>efficiencies</b> 199:13	<b>enjoy</b> 279:3
			<b>ensure</b> 15:19 78:7 108:14 142:6 186:6 187:5 194:5 200:23 206:13 209:6
			<b>ensuring</b> 15:13 109:25 110:2 186:11
			<b>entail</b> 25:14
			<b>entailed</b> 25:8
			<b>entails</b> 222:27

<b>enter</b> 63:11	226:14	<b>exhibits</b> 8:11 9:27 10:2 20:5 94:4 225:10 277:4, 11,19,22 278:8	<b>extra</b> 130:19 159:13
<b>entered</b> 236:11	<b>Evolution</b> 189:12	<b>exist</b> 15:26 83:20 89:11 128:21 268:7	<b>extract</b> 79:28 94:19 171:8
<b>entertain</b> 128:8	<b>exam</b> 123:9	<b>exists</b> 95:9	<b>extremely</b> 29:9 74:25
<b>entire</b> 17:12 79:16 85:2 115:1 154:6 194:12 236:5 238:3	<b>examination</b> 6:16 7:1 11:20 21:17 33:19 62:23 76:3 86:25 123:27 165:20 206:4 211:15 219:19 226:24	<b>expectations</b> 71:10	<hr/> <b>F</b> <hr/>
<b>entirety</b> 106:18	<b>examined</b> 21:4	<b>expected</b> 17:14	<b>face</b> 162:8
<b>entities</b> 169:22	<b>examples</b> 93:19 102:11 117:5 122:15 150:5 236:19 237:19,21	<b>expecting</b> 165:1	<b>facilitate</b> 74:28 89:26
<b>entitled</b> 275:1 276:12	<b>exceedingly</b> 239:5	<b>expediency</b> 133:14	<b>facilities</b> 111:19 201:2 208:8
<b>entity</b> 104:3 169:14 173:10	<b>excellent</b> 72:10	<b>expedited</b> 144:25	<b>fact</b> 5:26 11:2 17:21 18:5 33:28 75:15 90:10 98:4 101:3 105:28 116:26 121:11,13 127:8 128:19 135:7 136:26 139:9 144:26 173:4 178:3,10 180:3,8,19 181:1 236:24 237:16 273:5
<b>entry</b> 9:12,13 20:23,24 226:8,9	<b>exceptional</b> 220:16	<b>experience</b> 5:19 21:7 107:10 109:19,27 110:5 113:21 161:16,27 163:14 182:22 206:15 207:19 208:14	<b>facts</b> 128:20
<b>equate</b> 18:25 72:14	<b>excerpt</b> 146:17	<b>experiences</b> 199:19	<b>factual</b> 127:15
<b>equated</b> 207:4	<b>excerpts</b> 148:2 149:23 150:16	<b>expert</b> 165:4 169:21,28	<b>fail</b> 168:9 270:7
<b>equates</b> 183:2	<b>exchanged</b> 229:4	<b>expiration</b> 222:2	<b>fails</b> 186:18
<b>equipment</b> 16:25 23:27 95:4,7,9,15 111:19 112:16 199:23, 26 200:11,16,19,21 201:5,10,13,17,20,23 202:11,14,19,27 203:12 204:16 205:18 209:9	<b>excited</b> 210:25	<b>explain</b> 11:2,28 12:16 13:5 63:26 66:16,17 77:27 81:8,11 84:23 86:17 87:14 90:9 94:17 98:17 107:24 110:18 112:11,19 153:13 220:12 227:12 272:19	<b>fair</b> 99:9 129:25 167:15 171:17,19 175:26 177:28 276:3
<b>equivalent</b> 96:16	<b>excluding</b> 83:25 84:1 91:7	<b>explained</b> 11:12 16:19 17:27 27:16 30:22 73:21 75:9 151:11 230:27 231:5 270:15 271:10 272:17,21	<b>fairly</b> 114:25 149:20
<b>era</b> 32:8	<b>exclusively</b> 14:24 118:7 229:21	<b>explains</b> 156:9 269:24	<b>fairness</b> 154:8 241:20
<b>Ergen</b> 229:15	<b>Excuse</b> 24:18 63:20 106:9	<b>explanation</b> 86:21	<b>faith</b> 84:14
<b>essentially</b> 13:27	<b>executed</b> 131:10	<b>express</b> 268:8	<b>false</b> 25:17 26:17,23 72:13 73:22 74:16 127:8,23 165:6 167:12 173:13 228:1 239:11
<b>establish</b> 126:5	<b>executing</b> 190:25 193:2	<b>expressed</b> 207:7	<b>familiar</b> 70:1 131:14 142:18 148:11,14 169:16 171:9,24 174:16,18 181:25 184:23
<b>established</b> 86:11 100:24 134:24 175:12 179:6	<b>executive</b> 99:24 226:28	<b>extend</b> 121:14 130:25 136:18	<b>familiarize</b> 178:20 179:10
<b>estimate</b> 97:22 197:20	<b>executives</b> 229:2	<b>extended</b> 69:26 175:6, 17	<b>familiarized</b> 179:15
<b>estimates</b> 198:6	<b>exercisable</b> 133:17	<b>extensive</b> 208:5	<b>fashion</b> 83:17 202:17, 24
<b>evening</b> 279:3	<b>exercise</b> 133:21	<b>extensively</b> 228:9 230:2	<b>faster</b> 32:2
<b>event</b> 189:1	<b>exhibit</b> 65:28 94:2 102:14 117:6 131:24 132:20 133:6 139:26 142:21 145:24 146:4,28 148:7 152:2,14 154:5 160:26 171:1 174:7 179:18 181:12 189:2 196:4 231:11 233:25 237:1 266:26 277:20, 23,25,27 278:1,3,14	<b>extent</b> 135:15	
<b>eventually</b> 229:3		<b>external</b> 19:23 227:1	
<b>evidence</b> 11:8 12:12 18:12 102:6 115:28 151:18 177:5,19 181:5 276:13 277:4,12,15,22, 26,27 278:1,3,14			
<b>evidentiary</b> 8:8 9:19 20:22 224:18 225:6			



<b>FCC</b> 89:5 152:27 182:18 199:2,20 219:23,26 220:23 221:16,27 222:11 232:4,8,23 268:24,26 270:4	<b>flag</b> 210:1	<b>frequencies</b> 212:2	<b>Gelfand</b> 6:7 8:5,7,9,13, 20,25 9:1,8,15,23 10:3, 8,11,22 19:10,12 21:12, 16,18 24:23,27 25:15 29:28 30:7 33:21,28 62:22,24 63:1,5,25 65:8,25,26 69:10 70:21, 23 71:26 72:1 73:11 75:6,10,15 76:6,9 77:3 81:5 82:4,8,28 85:9,13 86:23 93:9 94:1 101:19 106:9,15,25 109:15 123:6,15 124:27 125:6, 17 126:10 127:28 128:3,7,14,22 133:3,8 134:9,22 135:12,25 137:6 138:22 139:3,16 141:12 143:12 145:26 146:8,25 147:21,25 148:5,17 149:1,23 150:4 151:5 152:1,11 154:2 155:25 160:20 164:13,24 165:3 166:3 167:11 170:10 171:18 176:1,21 182:28 183:5, 22 194:26 198:3,13,22 213:8 236:21 237:12 239:7 240:11,13,19,22 241:11,16 242:1 266:11,15,21 267:3 268:9 272:18 273:7,28 274:19 275:1,4,9,17 276:5 278:21,27
<b>February</b> 11:24 22:11 24:15 25:2,5 85:19 90:12 91:11 98:15,22 99:17,21,25 104:1	<b>floor</b> 128:6 175:23	<b>frequency</b> 201:11,22, 28	<b>Gelfand's</b> 165:20
<b>federal</b> 28:7 29:11 109:23	<b>flow</b> 201:22	<b>frequently</b> 183:18 184:9 185:1 191:24 224:6	<b>general</b> 7:3 29:1 110:20 228:21 232:4
<b>feel</b> 26:25 189:22 213:13	<b>focus</b> 12:3,25 85:7 150:10 154:10,13 184:4 237:27	<b>freshly</b> 80:26 211:3,4	<b>generally</b> 32:18 96:28 104:9 229:11 269:21
<b>fees</b> 228:28	<b>focused</b> 109:25 269:22	<b>front</b> 73:19 85:20 90:13 92:14 94:24 101:23 131:25 132:24 133:10 139:19 140:4,8 142:27 143:11,21 146:22 148:8,23 151:19 160:27 161:7 171:2,6 173:7 174:9 177:22 181:13 188:27 189:4,6 196:7 199:1 210:18 211:26 212:17 267:2	<b>generate</b> 28:19
<b>felt</b> 239:19	<b>folks</b> 193:4	<b>fuel</b> 28:18	<b>generation</b> 201:6
<b>field</b> 95:6,8 96:2 208:8	<b>follow</b> 123:19 236:28	<b>fulfill</b> 23:14 29:18 220:22 221:25	<b>generations</b> 28:11
<b>figure</b> 10:19	<b>font</b> 142:22	<b>full</b> 14:10,13 85:13 118:27 119:9,18 137:14 138:14 154:4 156:2 168:11 240:15 276:24	<b>George</b> 66:4
<b>figuring</b> 165:4	<b>foolish</b> 119:11	<b>fully</b> 110:3 112:23 114:7 124:23 125:14 126:15 136:10 142:9 187:2,8	<b>GHZ</b> 93:28 96:9
<b>file</b> 146:18 195:12,20 275:25	<b>Footnote</b> 184:14	<b>fully-compatible</b> 186:7	<b>gigahertz</b> 100:16,22 103:4 105:10 220:7 222:13
<b>filed</b> 127:21 128:24,27 129:2 172:17 174:25 195:5,22,25 196:5 227:20 238:13,18,19 267:15	<b>force</b> 14:9	<b>fulsome</b> 74:14 181:5	<b>gist</b> 207:12
<b>filing</b> 128:28 267:10	<b>foremost</b> 23:1	<b>function</b> 7:11	<b>give</b> 14:8 16:26 67:6 72:5 75:24 76:15 115:9 116:7 117:26 122:9
<b>final</b> 78:23 111:10 228:20	<b>forfeited</b> 232:8,24 268:26 270:9,18,27 271:2	<b>fund</b> 196:17	
<b>finally</b> 9:17 21:6	<b>forgive</b> 148:10	<b>fundamentally</b> 16:8	
<b>financial</b> 197:11,13 199:7,14	<b>forgotten</b> 165:11	<b>funny</b> 30:1	
<b>find</b> 10:26 16:9 69:10 140:14 149:12 184:11	<b>form</b> 26:14 130:14 153:6,17	<b>future</b> 9:12,13 20:23,24 88:1 101:13 226:8,9	
<b>finding</b> 11:11	<b>formal</b> 8:15,22 19:27 225:18	<b>G</b>	
<b>fine</b> 76:5 114:18 189:23	<b>formulating</b> 237:15	<b>game</b> 236:3	
<b>finish</b> 122:5 128:3 157:21	<b>forthcoming</b> 124:26	<b>gather</b> 171:20	
<b>finished</b> 130:21	<b>forthright</b> 181:4	<b>gave</b> 7:26 13:28 16:28 74:26 83:9 88:20 130:19 142:19 161:3	
<b>first-year</b> 120:28	<b>forward</b> 33:6 135:10		
<b>first.'</b> 88:28 152:27	<b>found</b> 14:1 184:21		
<b>five-year</b> 137:1 138:17 232:11 240:28	<b>foundation</b> 134:23		
<b>fixed</b> 28:10 111:26	<b>fourth</b> 106:7 107:5		
	<b>fragments</b> 11:9		
	<b>frame</b> 68:25 83:18 90:20 206:15 207:23 208:12		
	<b>frames</b> 207:6,14		
	<b>framework</b> 16:21		
	<b>free</b> 19:23 109:3 192:19 193:6 199:22 200:22 209:14 223:16		
	<b>freed</b> 223:12		

131:26 161:7 162:16, 23,27 163:1,16 164:7 171:16 184:16 205:25 241:4	<b>happen</b> 87:22 130:2 138:2 139:7 162:5 164:9 186:11 187:6,24 188:25 189:1 191:28 202:16,23 208:11 209:18 223:8 231:23,26 271:6	<b>held</b> 8:8 9:4 20:15 224:19 225:7,28	176:2,22 184:21 188:9 194:9 198:13,23 203:22 211:20,21 212:10 213:8,9,16 220:9,27 221:18 222:4,11 223:3 224:10,21 225:1 226:18,23 236:21 237:4,12,25 239:7,12 240:13,20 241:11,14 242:1 266:22 272:23 273:7,15 274:19,22 275:9,18,21 276:5,16 277:3,13,18 278:7,21, 27
<b>giving</b> 80:19 123:10 133:17 276:15	<b>happened</b> 18:6 127:26 229:8 237:14	<b>helpful</b> 33:16 75:21 81:10 108:22 139:21 147:28 152:9	<b>Honor's</b> 123:8 171:20
<b>golden</b> 278:20	<b>happy</b> 85:3 128:17 182:5	<b>hey</b> 235:23	<b>Honors</b> 10:13,28 19:5, 6 64:23 81:11 82:28 88:13 128:18 161:22
<b>good</b> 17:23 30:17 34:1 65:26 76:14 84:14 90:8 124:8,9 160:20 206:7 211:20 232:3,12 233:10 268:24	<b>hard</b> 74:26 75:2 106:26 161:6 191:27 209:13	<b>hide</b> 26:26 98:4 105:28 139:9	<b>hope</b> 11:20 72:23 73:16 75:16 76:15 193:20
<b>governs</b> 177:26	<b>hardcopy</b> 132:14,20	<b>high</b> 28:4 29:8 32:10 196:20 278:28	<b>hopeful</b> 207:25
<b>granted</b> 232:4	<b>harm</b> 183:17 184:8	<b>high-band</b> 212:2	<b>hoping</b> 192:2 207:23
<b>grateful</b> 75:18 123:12, 14 275:19 276:14	<b>hate</b> 173:13	<b>high-level</b> 63:28	<b>host</b> 191:17 192:15 193:17 197:10
<b>great</b> 29:25 32:22 132:28 170:2 192:21 199:18	<b>he'll</b> 172:1	<b>highlighted</b> 156:14 177:25	<b>hour</b> 76:7 81:18 240:16, 18 279:5
<b>greater</b> 191:26 270:8	<b>head</b> 132:22 194:26 202:28 205:5,9,16,21	<b>highly</b> 71:20 164:1 241:10,14,24	<b>hours</b> 26:5
<b>group</b> 169:4,6 170:7	<b>headers</b> 95:3	<b>hinges</b> 271:18	<b>housed</b> 203:7
<b>guarantee</b> 14:1 72:15 73:23	<b>heading</b> 133:1 189:11 267:16 269:22	<b>history</b> 121:9	<b>housekeeping</b> 7:4
<b>guaranteed</b> 13:24	<b>heads</b> 203:3 204:9,27, 28 273:21	<b>hold</b> 14:11 134:8 143:11 157:20 230:21	<b>housing</b> 204:10
<b>guess</b> 10:19 139:8 146:9 273:22	<b>hear</b> 62:26 132:20 166:7 224:28 239:14 240:23 266:11 274:27 275:2 279:1	<b>holdings</b> 212:5	<b>how's</b> 30:12
<b>guidance</b> 70:24 75:20	<b>heard</b> 7:5 64:27 139:4	<b>home</b> 28:9,10 274:14, 15,17 279:2	<b>huge</b> 199:12
<b>guidelines</b> 7:9	<b>hearing</b> 6:3 7:5,26 8:2, 4,8 9:6,19 10:13 12:26 13:4,17 15:3,11 18:13 20:17,23 22:20 24:14 25:2,3,5 70:3 75:12 85:21 90:13 91:22 94:4 106:22 108:2 119:15 124:21 125:2,13,19 146:19 149:26 153:13 158:11,20 160:19 169:11,20 173:23 176:14 177:3 179:3 198:10 200:4 224:19 225:6 226:2,14 227:24 238:12 272:27 273:8 276:6 278:12,26	<b>honestly</b> 73:13 169:21	<b>hypothetical</b> 272:13
<b>guidepost</b> 184:16		<b>Honor</b> 8:9,13,25 9:1,8, 15,24 10:3 13:15,16 19:25 20:2,8,12,18,27 21:5,11,16 30:1 33:21, 26,28 62:24 65:16,27 69:16,22 70:7,23,25,27 71:26 72:1 73:15 74:18 75:4,10,16 76:9 81:5 82:4,16,22 84:26 86:24 94:1 98:10 101:7 123:7, 11 124:2,5,27 125:6,17, 22,25 126:15 128:14 131:28 132:13 134:22, 28 135:12 138:26 139:2,3,23 140:7,13 141:12 143:16 145:22, 26 146:8,25 147:13,26, 27 150:4,11 151:5 152:11 154:2 155:25 160:7,20 164:17 165:3, 8,12,17 166:3,8 167:14 168:16 170:10,22 171:18,26 172:4 173:19	<b>hypothetically</b> 69:16
<b>guy</b> 199:15			
<hr/> <b>H</b> <hr/>			<hr/> <b>I</b> <hr/>
<b>ha</b> 202:4	<b>hearings</b> 9:12,13 11:26 20:23,24 33:25 126:20 127:13 208:16 226:8,9		<b>idea</b> 151:6 221:14 269:26 272:14
<b>half</b> 240:16,18			<b>identification</b> 146:1,10
<b>handled</b> 83:3			<b>identified</b> 9:21 20:6 95:16 226:16
<b>hands</b> 86:3 210:10			<b>identify</b> 7:10 208:15 236:18
<b>handset</b> 84:10 85:26 162:15 187:15,21 188:18 190:20,24 192:18 193:5,6,19,20			<b>identifying</b> 97:7
<b>handsets</b> 186:15 192:19 209:14			

<b>imagine</b> 274:15	<b>incorrect</b> 13:23 16:8 93:5,7,10	<b>integrate</b> 130:4	<b>introduction</b> 13:17
<b>immediately</b> 21:10	<b>increase</b> 12:8	<b>integration</b> 109:2 110:24,28 111:11,21,25 112:28 129:18,22 150:20 161:17,28 224:2	<b>invention</b> 17:8
<b>impact</b> 24:12 82:13 89:6 109:26 152:28 206:9 236:7	<b>incredible</b> 25:28 109:22	<b>intend</b> 11:16 81:7 204:4	<b>investing</b> 16:23
<b>impacted</b> 192:11,26	<b>incredibly</b> 30:14 192:12	<b>intended</b> 73:28 90:9 110:19 113:23 114:16 116:27 164:3 222:25	<b>investment</b> 28:22 29:15
<b>impacts</b> 184:7	<b>indicating</b> 5:11	<b>intending</b> 127:12 166:1 167:22	<b>investments</b> 186:13
<b>impair</b> 12:28	<b>indication</b> 87:20	<b>intends</b> 153:22 155:16 205:4,16	<b>invite</b> 266:17
<b>impeachment</b> 9:26 10:2	<b>indirect</b> 236:24	<b>intent</b> 17:24 26:12,16 109:9 113:14,22 114:20 118:17 119:2 120:11 122:7,11 129:19 131:1 137:20,26 144:6,19 145:13 166:25 168:15 178:14,16 180:16 190:27 210:8 223:15	<b>involve</b> 88:9
<b>implications</b> 26:4	<b>indisputably</b> 17:23	<b>intention</b> 9:24 122:18 157:9 167:7 194:17	<b>involved</b> 22:5 23:25 24:9 70:1 131:20 135:7 228:6,18 229:12
<b>implicit</b> 71:3	<b>indulgence</b> 76:16	<b>interaction</b> 76:14	<b>irrevocable</b> 133:21
<b>important</b> 12:21 30:9 32:6 76:17 79:16 95:23 120:22 209:19 233:5	<b>industry</b> 96:10 192:6 209:1	<b>interest</b> 7:23 12:11 70:25 74:24 85:1 151:26 164:18 213:14 227:16 231:10	<b>issue</b> 70:13 91:22 98:18 139:11 160:10 165:6 195:18 210:13 213:10,14 273:12 274:10
<b>imposed</b> 182:16 196:22 238:15	<b>inefficient</b> 33:2	<b>interested</b> 196:10 199:16	<b>issued</b> 69:12 70:2 178:1,8 179:4,21,26 180:23 182:3 227:25 233:21,26 235:5,14
<b>imposes</b> 65:13	<b>infer</b> 11:7	<b>intention</b> 9:24 122:18 157:9 167:7 194:17	<b>issues</b> 11:26 13:13,14 18:21 33:19 70:1 126:2 274:23
<b>impossible</b> 88:2 191:17 210:27	<b>inferring</b> 269:3	<b>interaction</b> 76:14	<b>italics</b> 103:9
<b>improve</b> 12:7	<b>inflict</b> 162:13	<b>interest</b> 7:23 12:11 70:25 74:24 85:1 151:26 164:18 213:14 227:16 231:10	<b>Item</b> 149:15
<b>improved</b> 12:17	<b>influences</b> 19:23	<b>intention</b> 9:24 122:18 157:9 167:7 194:17	<b>items</b> 148:28
<b>improvements</b> 28:14	<b>inform</b> 64:26 72:12 121:21	<b>interaction</b> 76:14	<b>it's</b> 10:14 97:19 98:15 100:4 103:9 104:7 107:22,26 108:1,21 109:1 119:1 167:9 170:7,14 171:2,18,28 173:6 174:25 176:9,28 178:12 179:23 180:24 181:15 184:17 186:4 189:5 190:19 191:17 236:23 238:11,12,14,27 271:11 273:14,15 274:5
<b>in-</b> 179:20	<b>information</b> 5:25 13:5 18:7 25:19 26:18 29:3, 20 79:18 80:28 85:16 87:23 94:21,25 95:18 106:5 126:21 159:13 189:17 192:16,17	<b>interest</b> 7:23 12:11 70:25 74:24 85:1 151:26 164:18 213:14 227:16 231:10	<b>January</b> 183:16 185:8, 25 188:21 190:1 191:13 193:11,28 194:13,18 200:10 203:25,26 205:5 232:19 236:6 270:16, 19,25 271:1,12
<b>in-person</b> 229:6	<b>informed</b> 224:22	<b>intending</b> 127:12 166:1 167:22	
<b>inaudible</b> 111:6 223:19 228:21 275:27	<b>informs</b> 33:23	<b>intends</b> 153:22 155:16 205:4,16	
<b>incentive</b> 90:1	<b>initial</b> 11:18 229:1	<b>intention</b> 9:24 122:18 157:9 167:7 194:17	
<b>include</b> 16:5 86:4 89:18 90:26	<b>inserted</b> 199:11	<b>interaction</b> 76:14	
<b>included</b> 28:8 94:6 103:28	<b>insisted</b> 230:14	<b>interest</b> 7:23 12:11 70:25 74:24 85:1 151:26 164:18 213:14 227:16 231:10	
<b>includes</b> 67:25	<b>insistent</b> 136:26	<b>intending</b> 127:12 166:1 167:22	
<b>including</b> 8:23 9:5 19:28 20:15,22 28:15, 16 89:23 97:5 124:17 127:22 190:10 193:18 225:19 226:1 234:24	<b>install</b> 16:25	<b>interaction</b> 76:14	
<b>incompetent</b> 273:12	<b>instance</b> 158:21	<b>interest</b> 7:23 12:11 70:25 74:24 85:1 151:26 164:18 213:14 227:16 231:10	
<b>inconsistent</b> 238:9,11, 13,15	<b>instances</b> 11:5 70:8 106:28	<b>intending</b> 127:12 166:1 167:22	
<b>incorporates</b> 179:20	<b>instant</b> 224:19	<b>intends</b> 153:22 155:16 205:4,16	
	<b>institution</b> 74:3	<b>intention</b> 9:24 122:18 157:9 167:7 194:17	
	<b>insurance</b> 145:11	<b>interaction</b> 76:14	

**J**

<b>Jeff</b> 226:19,28		234:12,16,17,23,27	<b>linguist</b> 141:13
<b>job</b> 72:6 187:13 210:15	<b>L</b>	<b>legacy-dated</b> 31:2	<b>list</b> 96:19 103:6,8 105:7
<b>John</b> 98:21,25,26	<b>lack</b> 134:23 179:12	<b>legacy-sprint</b> 85:23	<b>listed</b> 103:6
<b>joint</b> 7:24	<b>lagging</b> 209:27	<b>legal</b> 128:16,28 134:27 178:12 195:13 269:4	<b>lists</b> 105:12
<b>judge</b> 6:11,24 7:22 75:18 123:16 161:9 180:24 188:2 205:27 206:6 211:13 266:16 274:14	<b>laid</b> 123:19	<b>legislative</b> 227:1	<b>literally</b> 31:15 160:17
<b>judges</b> 22:25 62:26 63:26 84:23 103:19	<b>landlords</b> 111:18	<b>length</b> 142:2 145:4 223:26 228:24	<b>live</b> 91:21 153:11 157:28 195:7
<b>judgment</b> 228:20	<b>language</b> 86:13 93:20 224:8	<b>lengthy</b> 94:13 111:17 149:20	<b>load</b> 146:26
<b>July</b> 132:15 197:22 198:7,26 228:12,26 232:22 236:2 267:20,27 268:6,16 269:3 271:2	<b>large</b> 26:6 72:3 94:5,20 97:19 149:27 239:5	<b>let alone</b> 137:25	<b>loaded</b> 148:9
<b>June</b> 202:6,15 204:1,11 205:9,17 266:28 270:17,25 271:13	<b>largely</b> 123:23	<b>letter</b> 219:25,26,28 220:12 221:26 235:20, 26 237:23,27 238:2	<b>loading</b> 146:23
<b>Justice</b> 12:23 16:17 17:26 22:23 24:5,8 25:11 63:7,16 68:11,17 69:2 71:11,12,21 74:1 78:17 79:24 116:17 120:16 130:27 159:6 167:4,28 168:3 177:8, 24 187:8 188:28 199:3 200:2 207:9 208:7 210:11	<b>lasted</b> 228:14	<b>letting</b> 132:18 156:1	<b>located</b> 82:24
<b>justify</b> 273:5	<b>launched</b> 31:11	<b>let's</b> 97:26 102:11 117:5 119:13 172:3 173:16 237:27 239:15 272:20 274:17 275:6 277:9	<b>location</b> 32:9 187:1 188:23 190:11 200:14
	<b>lavender</b> 221:3	<b>level</b> 28:21 29:2 110:20 121:23	<b>locations</b> 205:13,15,21
	<b>law</b> 127:9 180:24	<b>leverage</b> 208:7 222:19, 20,21,26	<b>locked</b> 210:10
	<b>lawyer</b> 134:26 195:24 227:3 228:17 278:28	<b>leveraged</b> 221:23	<b>long</b> 21:28 27:19 71:28 91:26 114:28 165:18 207:16
	<b>lawyers</b> 128:16 147:10 229:17 274:16	<b>liberal</b> 171:21	<b>longer</b> 23:23,24 78:26 80:7 83:22 90:18 112:17 120:14 144:9 185:10,28 187:28 188:21 194:1 239:20
	<b>layer</b> 202:21 221:8	<b>license</b> 131:15 135:21 227:13 230:21 232:9,28 268:10,20 269:7,8,26, 28 270:5,6,18 271:8,26 273:19,26	<b>looked</b> 79:21 86:13,21 103:14 105:16,25 159:3 212:15 221:4,14 222:14
	<b>lead</b> 228:17	<b>licenses</b> 133:24 232:3, 5,7,12,14,15,16,23,25 268:26,27 270:9,26 271:1,15,23	<b>Loosely</b> 131:17
	<b>lead-up</b> 7:5	<b>light</b> 16:2,9 83:21 89:16 90:24 92:2 105:16,24 117:18	<b>loss</b> 5:6
	<b>learned</b> 278:24	<b>lights</b> 277:2	<b>lost</b> 34:4 135:17 197:24 198:10,27 199:5 232:15
	<b>lease</b> 131:14 133:22 135:20 153:26 155:20 230:14 231:6,16,17 232:28 233:14	<b>lilac</b> 221:3	<b>lot</b> 29:14 104:7 171:19 205:21 206:10 207:19, 27 208:14 222:6 269:25
	<b>leaseback</b> 130:14 131:8 133:2 135:6,19 136:13	<b>limiting</b> 91:13	<b>loud</b> 108:9 198:9 239:1
	<b>leased</b> 137:21	<b>lined</b> 75:2	<b>low</b> 105:11 208:1
	<b>leave</b> 71:22	<b>lines</b> 82:20,21 100:3,7 102:17,23 117:8	<b>low-band</b> 212:2 220:18 221:8
	<b>leeway</b> 276:15		<b>low-income</b> 183:19 184:10 185:1
	<b>left</b> 5:4 87:17 210:3 276:26		<b>lower</b> 162:7
	<b>legacy</b> 66:14,22 67:24, 27 76:23 77:19,24 78:19,27 79:4 83:25 84:20 86:10 113:28 119:24 120:9 142:9 144:3 162:14 182:21 183:1 199:23 200:20 208:1,26 210:22 223:17		<b>LPA</b> 131:16,21
			<b>LTE</b> 5:13 31:16,27 32:3, 13 33:2 77:1 87:8,27
	<b>K</b>		
<b>key</b> 150:24 200:3 201:4			
<b>kind</b> 18:25 73:9 75:19 95:1,11 111:22 114:26 191:11 209:11 274:8 275:23			
<b>kinds</b> 150:2			
<b>knew</b> 148:23,24 207:21 208:13 222:24 267:11 271:27 272:11			
<b>knowledge</b> 19:22 68:6 87:21,25 99:10,13 125:3 134:24 135:8 139:15 168:11 193:13			

88:5 92:8 114:1 117:16 142:8 158:3 202:5,11, 20,21 203:3,25 204:1,5, 12,17,20,22,28 205:9, 16,22 223:12 234:28 270:16 271:11,13,19,22 272:2,6,12	146:27 148:27 164:9 179:9 186:10,28 188:3, 4,7,22,28 190:10,21 191:13,27 192:27 193:3,10,16 194:1 209:17 212:15 222:2 223:8,22 224:8 225:23 233:28 271:19	195:1 198:18 203:19 205:24 206:6 211:11 224:11,15 236:27 237:18,26 239:14 240:10,17 241:26 242:3,7	118:21,24 120:4,18,21 121:17,19 131:3,5 133:23 134:19 135:22 136:15,16,19,23 137:5, 11,21 143:6,27 144:13 222:22 227:13 229:28 230:11,15,26 231:3,7, 14,25 232:14,19 233:2 268:22 270:7,24,28 272:1,22 273:20
<b>lunch</b> 11:21 76:4,8,13 79:11 81:14 82:9 86:13	<b>makeup</b> 203:17	<b>massive</b> 12:12 29:15	
<hr/> <b>M</b> <hr/>	<b>making</b> 6:8 27:14 29:4, 9 73:16 101:12 114:26 145:2 191:15 199:16 269:4 273:13	<b>Master</b> 64:9	<b>memorialized</b> 267:20, 28 268:13,14,18 269:5, 13,16 273:14
<b>made</b> 5:10 6:7 10:24 15:10 19:1 23:20 25:17 26:17,22 29:11 72:13 73:18 75:25 80:12 87:16 106:21 107:2,26 110:26 127:22 137:23 162:5 165:7 170:26 171:14 175:18 186:9,12 187:7 193:18 210:4 212:3 219:23,28 234:2, 8 274:1,7	<b>manage</b> 91:16,18 113:12 192:2 206:21	<b>material</b> 27:10 28:8,14, 28 29:26 34:10,12 62:20 198:27 213:22,24 219:18 242:6,8 266:9	<b>memory</b> 19:23 162:11
<b>magenta</b> 105:3	<b>manages</b> 27:7 185:3	<b>materially</b> 32:12 33:6, 13 130:28	<b>mention</b> 28:17 68:19 175:18
<b>magnitude</b> 32:1	<b>managing</b> 87:18	<b>math</b> 194:22,25,28 221:20	<b>mentioned</b> 32:23 96:14,15 173:28 199:12,26 200:15,24 222:5
<b>main</b> 12:3,25	<b>manner</b> 26:13 199:4	<b>matrix</b> 204:15	<b>mentions</b> 155:23 202:3
<b>maintain</b> 16:10 17:7,12 18:18 31:23 68:7,13,23 89:2 91:12 92:7 153:22 155:16 156:15,17,20 157:5,6,9 158:1,3 233:1 240:5 269:2,28 270:1, 10 271:8	<b>map</b> 199:14	<b>matter</b> 13:27 17:7 72:17 73:24 74:7 99:15 116:4,8,20 118:28 177:22 276:10 279:5	<b>merge</b> 99:5 104:3
<b>maintained</b> 18:26 72:16 137:24 149:5 159:8 176:18 269:27 271:24	<b>mark</b> 189:15 221:19	<b>matters</b> 180:15	<b>merger</b> 12:1,19 22:7, 11,16 24:13 25:20 27:1, 4 29:5 33:17 101:1 133:20 172:8,19,28 181:24 182:4 196:17 197:7,24 198:10 206:9 212:4 227:15 233:22
<b>maintaining</b> 5:14 15:12 68:20 87:18 88:8 92:18 116:3 157:14	<b>marked</b> 131:24 139:25 142:20 145:25 152:14 160:26 170:28 174:8 179:18 181:11 196:3 231:19 233:24	<b>maximize</b> 157:3	<b>mergers</b> 220:2
<b>major</b> 209:15	<b>market</b> 28:9,20,23 66:15 77:26 88:26 152:25 200:14 236:11	<b>maximum</b> 129:10,20, 23 141:10 142:1	<b>merit</b> 105:24 179:11 180:28
<b>majority</b> 187:18	<b>markets</b> 70:9 71:17	<b>meaning</b> 134:25 234:27	<b>meritless</b> 178:2,9 180:2,7,19
<b>make</b> 6:5,19,21,22 7:3 8:5,27 10:9 11:3 20:10 26:7 62:25 65:3 74:26 79:4 80:23 83:6 93:19 97:27 104:20 106:27 109:10 113:15 114:17, 28 115:10 118:18 120:26 130:2,24 138:2	<b>Marrero</b> 161:9	<b>means</b> 16:23 77:1 98:17 112:11 134:17 141:9 153:9,10 197:7	<b>message</b> 24:19 30:2
	<b>Mason</b> 6:12,25 24:18, 25 33:15,27 63:20,24 72:28 75:27 76:6 82:27 85:7 106:9,17,24 123:16 125:5,8,24 126:11 128:4,22 129:1, 7 132:8,12 135:2,11,14, 26 137:8 138:23 139:1, 14,27 140:5,9,14 141:14,18 143:14,19 145:17,21 146:2,13,21 147:16,18 148:3 150:8 154:9 156:6 157:20 160:4 164:19 165:9,14 166:6 167:16 168:23 170:13,18 171:27 173:15 174:4 176:3,23 183:8,25 184:2,17 187:26 188:12 194:8	<b>meant</b> 74:6 81:12 84:24 85:11 113:19 143:14	<b>met</b> 151:25 223:7
		<b>measure</b> 33:10 204:21	<b>Metro</b> 162:6,9,19 163:23,25 207:20
		<b>mechanisms</b> 192:15	<b>Metropcs</b> 192:22
		<b>meet</b> 29:10 66:26 129:19 168:3 186:18 187:9,22 196:21 199:1 200:5 211:3 222:11,16	<b>MHZ</b> 93:26,27 95:7,15, 27 96:2,4 153:23,26 155:17,20 156:15 157:9,15,25 200:11,19 201:9,11,12,14,17,20, 25,27 202:6,14,20,27 204:6,11,16,28 205:18, 22 213:4,5
		<b>meeting</b> 29:24	
		<b>meetings</b> 229:6	
		<b>megabyte</b> 157:5	
		<b>megahertz</b> 14:12,23 23:17 33:11 100:16 103:3 117:15,19,28	

<b>micro</b> 71:17	176:12,19 177:15,18	<b>misspoken</b> 67:3	<b>morning</b> 129:10
<b>microphone</b> 24:21	182:24 187:9 189:18	<b>misstates</b> 138:22	130:12 148:18 149:2,24
<b>mid</b> 105:11	192:24 195:9 206:13	183:5	151:12 152:2 164:24
<b>mid-'90s</b> 93:25	207:17,21 223:7 224:1	<b>misunderstandings</b>	165:19,26 182:27 183:9
<b>mid-band</b> 212:2 220:5,	230:10,16,20 231:2,24	126:17	194:26 227:24 231:20
6,18 221:1,5 222:8	232:11 233:13 234:7,14	<b>mitigation</b> 109:21	237:5
<b>middle</b> 32:15 95:1,25	235:8,12 236:16 238:8	110:12 113:16	<b>most-fulsome</b> 169:25
267:16 272:7	240:25 241:1	<b>MNOS</b> 172:10	<b>motion</b> 71:23 275:2
<b>migrate</b> 16:12 73:3	<b>Mike</b> 98:23 99:17	<b>MNSA</b> 64:10,13,17 65:4	<b>motor</b> 123:11
85:23 90:16,19 91:12	<b>millimeter</b> 103:4 105:9	66:2 68:2,6 82:12 86:6,	<b>move</b> 12:6 17:21 33:3
114:4,6 119:9 121:26	<b>million</b> 23:2 229:23	12,22 116:11,16 131:12	72:27 81:7 84:28 85:4
122:12 136:10 138:18	234:25	137:27 145:16 159:4	88:18 92:11 95:10,20
145:2 151:15 156:12	<b>millions</b> 12:7,16 236:7	177:19 187:11 200:1	101:20 116:27 120:27
157:1 163:5,8 192:7	<b>mind</b> 79:22 80:2,16	234:20	142:11 164:17 167:19
206:26 207:5	100:27 122:17,24,28	<b>Mobile</b> 63:22	168:28 170:13 173:16
<b>migrated</b> 5:13 15:13	123:2,5 144:14 266:22	<b>mode</b> 21:3	183:13 191:14 194:8
17:19 83:16 86:1 87:7	<b>mine</b> 178:17 185:4	<b>model</b> 104:12	195:1 239:15 274:20
88:5 89:3 92:8 109:8	<b>minimis</b> 193:9	<b>modern</b> 190:7	277:11,14 278:8
112:8,22 113:28	<b>minimize</b> 193:8	<b>modernization</b> 199:25	<b>moved</b> 32:8 33:6 277:4,
114:12,14,18 115:2,4	<b>minimum</b> 66:20 67:11	<b>modification</b> 172:18	22
186:14 207:2	151:20 168:6 190:27	174:26 195:6,12,21,26	<b>moving</b> 33:14
<b>migrating</b> 77:23 88:27	194:6	196:6 238:18 239:18	<b>multiple</b> 31:5 32:1
152:26	<b>minimus</b> 191:16	<b>modified</b> 16:5 89:18	101:4 102:7 150:23
<b>migration</b> 5:16,20,23	192:28	90:26	151:9 158:3 165:22
14:6,16,26,28 15:6,18	<b>minted</b> 80:27	<b>modifies</b> 156:3	166:9 178:15 180:12
16:22 17:3,14 73:8	<b>minute</b> 213:18 224:12	<b>modify</b> 90:11 266:25,	204:23
76:23 77:19 78:6,9	<b>minutes</b> 63:8 76:1	28	<b>mute</b> 125:7 224:25
80:10 82:14 83:2,14,24	81:6,13 110:17 123:8	<b>moment</b> 13:12 30:4	<b>muted</b> 125:5 224:23
84:15 85:17 86:2 89:21	170:15 176:8	34:1 76:28 79:10	<b>muting</b> 176:23
90:2 91:16,18 107:11	<b>mislead</b> 26:13 127:7,	<b>monetary</b> 239:3	<b>MVNO</b> 23:7 63:11,20,
109:12,28 110:4,11	11,12 167:7,12 178:14	<b>money</b> 197:7	28 64:8,10,13,21 90:6
111:4,7 112:13,20	180:14	<b>monitor</b> 143:1 146:24	236:2
113:4,8,17 114:1,6	<b>misleading</b> 5:25 25:18	148:9 160:28 181:16	<b>MVNOS</b> 172:15
115:23 116:8,28 118:9,	26:17,23 126:7 228:1	<b>months</b> 16:28 28:24	
11,15,26 119:3,7 120:7	<b>misleadingly</b> 25:18	30:16 66:13,21,27,28	<hr/>
121:5,26 122:2,19	<b>misled</b> 167:10 273:2,6	67:1,11,15 68:18 69:6	<b>N</b>
129:12,16,26,28 130:3,	<b>misread</b> 110:7	70:14,17 78:21 79:27	<hr/>
8,21,24 136:28 137:14	<b>misrepresentation</b>	116:14 144:24 151:20,	<b>names</b> 267:5
138:2,8,11 140:28	167:13	21 159:16 160:2,3	<b>narrow</b> 18:21
141:2,5,24,26 142:5,12	<b>misrepresentations</b>	168:7 177:12 195:14,	<b>nation</b> 25:9
143:9 144:2,17,22,24	127:23	15,18 201:2 228:14	<b>national</b> 136:16
145:6,10,15 149:6,7,28	<b>misrepresented</b>	232:7,15 236:3 270:8,	<b>nationwide</b> 133:23
150:1,13,15,18,21,25,	105:19 128:1	19 271:15	194:18 197:25 198:11
27 151:3,14 153:25	<b>misrepresenting</b>	<b>months'</b> 16:26 67:5,6,	236:5 238:4 270:2
155:5,19,24 156:10	212:7	20 69:25 75:8 84:19	<b>natural</b> 223:17
157:3 158:4,13,23		86:9	<b>necessarily</b> 129:22
159:16 160:10 162:24			
163:24 164:2,26 165:2,			
23 166:2,16,18,23,26			
167:1,23 168:1,13			
170:27 175:20,28			

<b>needed</b> 14:13 17:2,18 78:10 94:11 121:12,28 130:4 139:10 208:13 231:1,2 233:12	230:4 231:8 234:16,27, 28 235:24 236:5,8 238:3 239:23 240:5 266:27 267:19 268:6,16 269:2 270:1,11,24,28 271:22,23 272:12,13	<b>noticed</b> 17:16	<b>obligation</b> 17:6,12,16, 18 23:25 65:13 66:20, 26 72:4 78:15 80:4 86:5,19 90:16,21 124:26 145:14 151:15 163:8 166:28 186:9,17, 18 187:3,5 220:22 267:18,26 268:15,18 269:2 270:6
<b>negotiate</b> 200:17		<b>notices</b> 95:17	
<b>negotiated</b> 63:14,15 68:12,15,26 69:23 71:12 120:15 144:10 234:19	<b>networks</b> 12:5 31:22, 23 32:9 77:4 112:3 130:5 172:14,15 200:26	<b>notification</b> 79:7	
<b>negotiating</b> 228:18,19	<b>Neville</b> 6:10 11:19 21:14,22 82:5	<b>notified</b> 194:11 266:21	
<b>negotiation</b> 131:21	<b>newer</b> 201:6	<b>November</b> 146:18 149:26 152:4 155:3 158:10 176:14 213:3	
<b>negotiations</b> 116:15 228:6,12,16,24,27 229:13,19 231:4 232:1 235:4 238:11 239:25 240:2	<b>newly</b> 80:27	<b>number</b> 5:3 13:20 28:3 89:25 94:24,28 95:5,6 96:1,3 101:21,25,26 115:18 132:10 133:4,5 142:23 146:11,14 149:27 152:17 184:15 189:3 191:15 192:11,26 193:9 194:3,5 197:15, 23 198:8,16,17 199:11 208:25 209:27 210:2 238:27,28 239:2,5	<b>obligations</b> 23:13,20 29:18 79:25 89:26 137:13 151:24 177:21 182:16 187:9,22 188:27 200:5 206:23 207:5 211:3 221:26 223:8
<b>net</b> 14:5	<b>nodding</b> 132:22		<b>observation</b> 223:23 224:7
<b>network</b> 5:1,11,15,28 6:2 13:26 14:7 15:8 16:22 23:6,9,15 27:7,16 28:15 29:5,9,14,17,26 30:13,15,26 31:9,10,15, 16,17,24 32:3,13,27 63:22 64:3,9 66:14,22, 23 67:24,27,28 68:7,14, 20,24 72:4,16 73:4 76:23,25 77:13,19,21, 24 78:5,12,14,19,27 79:4 80:20 84:17,21 86:10 87:5,18,20,26 88:8,26,27 90:3 91:26 92:19 94:26 99:12 100:15,18 101:3 104:12,14 105:1 106:3 110:3 111:2,8,27 112:17 114:13 115:1,11 116:19 118:21 120:9,11 121:6 130:8 137:24 138:10 141:4,26 142:7 144:4,6,16 150:21 152:25,26 156:20 159:28 169:3,7 172:21, 25 175:2 177:9 183:1, 16 185:8,25,27 186:8, 27 187:16 188:20 189:12,27 190:2,5,18 191:4 194:12,18 196:18 199:9,15 200:7,10 203:24,25 204:4,12 208:9,18,26 210:3,5 212:1 220:15 222:15,27 226:19 229:20,24,25	<b>non-compatible</b> 186:14	<b>numbered</b> 13:15,18	<b>obvious</b> 273:16
	<b>non-divested</b> 186:5	<b>numbers</b> 13:21	<b>occasions</b> 11:24 26:2
	<b>non-existent</b> 162:10		<b>occur</b> 112:20 150:27 228:10 240:25
	<b>nondivested</b> 91:14,16 156:11	<hr/> <b>O</b> <hr/>	<b>occurred</b> 228:11 229:6 241:23
	<b>noon</b> 76:4,7 81:6	<b>oath</b> 5:10 19:28 21:3 126:25 143:4 183:1 227:28	<b>occurrence</b> 21:9
	<b>normal</b> 192:5	<b>oaths</b> 8:17 225:14	<b>OCD-09</b> 171:1
	<b>note</b> 72:2 82:22 84:12 223:28	<b>object</b> 126:10 127:28 128:14 147:13 151:5 154:2 170:10 241:5 272:24	<b>OCD-1</b> 139:26
	<b>noted</b> 89:21 182:15 277:23	<b>objected</b> 273:10	<b>October</b> 70:15 194:11 195:16 235:16,21 275:8,16
	<b>notes</b> 183:15	<b>objecting</b> 171:19	<b>offer</b> 18:19,23 83:22 108:21 199:28 239:18
	<b>notice</b> 16:26 65:12 66:12,21,26 67:5,7,11, 13,15,19 68:17 69:5,13, 19,25 70:2,5,13,17 71:4,18 72:5,7,10,18,20 73:2,6,21,25 74:6,12, 21,27 75:8 76:18 78:11, 21 79:27 80:5,14,18,19 81:6 84:19 86:5,9 116:13 133:18 137:18, 28 144:23 151:16,19 159:1,10,23 160:1 167:2 168:4,8,9 177:11, 12 187:10 195:5,17 207:2,3 210:9 223:9 235:16 236:4	<b>objection</b> 124:27 125:17 128:7 134:22 135:25 137:6 138:22 139:17 141:12 146:27 147:19 150:4 154:9 156:7 164:13,20 165:3, 15 166:3 167:11 171:28 176:1,4,21 236:21 237:27 239:14 274:2,4, 11 277:17,19,23	<b>offered</b> 171:12 238:23
	<b>notice-period</b> 195:14	<b>Objections</b> 278:10	<b>offering</b> 237:2,21
		<b>objective</b> 72:21	<b>Office</b> 169:16 170:1,5, 25 171:14 172:6,9
		<b>obligated</b> 15:18 84:13 168:2	<b>officer</b> 9:22 21:9 99:1,8 226:17
			<b>officers</b> 7:13
			<b>older</b> 190:2 192:8
			<b>omissions</b> 127:23
			<b>omitted</b> 5:24 25:18 26:18
			<b>one's</b> 5:5
			<b>one-</b> 31:25

<b>one-hour</b> 81:16	184:27 202:2 221:15,25	180:12 187:23 199:4	<b>participated</b> 228:20
<b>open</b> 152:13 208:4 276:2	222:2 227:26 233:21, 26,28 234:6 235:6,14 239:23	200:21 221:17	<b>participating</b> 169:11 173:22
<b>opening</b> 6:5,9,19 7:24 8:6 10:10 13:17 76:10 275:7,10,24,26	<b>ordering</b> 101:9 182:19 234:10 238:16	<b>outlines</b> 166:24 177:20	<b>parties</b> 20:5,6 69:22 76:21 77:17 78:3,17 114:8 137:14 145:14 150:26 151:25 159:28 166:28 177:7 207:8 210:8,18 268:1,4
<b>operate</b> 131:3 134:5, 14,19 135:23 136:1,5 229:26 239:28 267:18, 27 268:5,15	<b>orders</b> 32:1	<b>outlining</b> 110:23 111:21	<b>parts</b> 28:16
<b>operating</b> 213:3 231:8 271:5	<b>original</b> 69:23	<b>outreach</b> 192:1,14 209:15	<b>party</b> 9:21 20:7 164:7 226:16 275:14
<b>operation</b> 70:9 230:5	<b>originally</b> 123:19	<b>outset</b> 111:23	<b>pass</b> 12:13
<b>operational</b> 172:25 205:9,17	<b>origins</b> 146:17	<b>overrule</b> 147:16 165:15	<b>passage</b> 151:28
<b>Operator</b> 63:23	<b>OSC</b> 26:11 33:19 65:27, 28 74:17 82:16 86:27 87:3,9 88:3,14 92:6,12, 15,25 93:11 94:3 98:12 101:21,26 102:13 103:26 105:18 106:8 107:5,6,24 108:1 115:15,19 117:6 119:14 132:9 140:25 142:21 178:13 181:12 266:25, 26 277:15,25,27 278:1, 3	<b>overruled</b> 126:11 135:26 137:8 138:23 139:17 141:14 154:9 166:6 171:28 176:24	<b>passed</b> 67:1
<b>opinion</b> 165:27 171:13, 16,25 172:1 176:28 180:27 185:4	<b>OSC-4</b> 132:11	<b>overruling</b> 147:18 156:6	<b>past</b> 130:25 192:5
<b>opportunities</b> 200:8 202:22	<b>OSCD-01</b> 278:9,14	<b>oversaw</b> 159:6	<b>pause</b> 76:27 166:19
<b>opportunity</b> 6:16 7:1 70:28 71:2 75:22 123:10 124:23 125:14, 26 126:6 147:6,27 154:24 191:19,25 193:19 205:26,28 213:15 230:25 231:15 233:17 241:5,17 266:17 275:20	<b>OSCD-02</b> 145:25 146:2,4	<b>oversee</b> 27:6	<b>pay</b> 64:5 191:24
<b>opposing</b> 9:21 20:7 226:16	<b>OSCD-07</b> 160:26	<b>oversight</b> 63:16	<b>PCS</b> 5:26 18:1,4,8 92:20,28 93:13,21,27 96:2,8,9 97:9,24 98:5 100:25 101:2,28 102:8 103:3,8,23 104:27,28 105:10,12,14,19,20,28 162:6,9 163:23,25 200:20 207:21 212:23 213:4,5 220:6,24 221:2, 15,19,22,27 222:19,26 223:2,5,10,11,15
<b>opposite</b> 11:6 18:5	<b>OSCD-08</b> 174:7	<b>owned</b> 80:6	<b>penalty</b> 19:15
<b>option</b> 133:2,22 135:19 136:13 139:10 153:26 155:20	<b>OSCD-10</b> 179:19	<hr/> <b>P</b> <hr/>	<b>pending</b> 19:17
<b>order</b> 5:7 7:25 10:23 11:5,7 13:9,11,19,23 18:1,2,22 24:5 25:16, 22,24,27 65:27 90:4 94:12 106:13 123:17,20 124:13,18 125:13 126:4,9 127:16,21 128:12 138:5,28 140:23 141:23 148:12 149:2,9 160:21 178:1,8,22 179:3,12 180:6,18,22, 28 181:9,10,19,23 182:2,12 183:14,21,28	<b>OSCD-11</b> 189:3	<b>p.m.</b> 82:1 279:5	<b>people</b> 65:22 229:12
	<b>OSCD-12</b> 196:4 278:9, 14	<b>pace</b> 29:25,26 145:2 199:3	<b>per-megahertz</b> 33:10, 12
	<b>OSCD-17</b> 233:25	<b>Pacific</b> 22:4	<b>percent</b> 32:12
	<b>OSCD-4</b> 131:24 231:21	<b>pages</b> 15:21 97:20 269:23	<b>perfect</b> 101:9
	<b>outcome</b> 17:23 190:26 191:27	<b>pain</b> 162:13	<b>perfectly</b> 70:11
	<b>outer</b> 129:26 138:9 141:3,9,15,25,28 144:16	<b>painstakingly</b> 17:25	<b>performance</b> 220:16 221:7
	<b>outlets</b> 190:23	<b>paper</b> 153:11 161:7	<b>period</b> 5:20 14:4,27 15:9 66:21 67:20 69:5 78:11 79:7 80:14 107:11 111:22 112:1 113:11 114:7,15 117:3 118:10,26 119:10 120:28 121:1,7,28
	<b>outline</b> 24:16 25:6,13 26:2 75:16 163:4	<b>paragraph</b> 100:2,8 133:14 182:20 184:18 234:10 238:16	
	<b>outlined</b> 28:6 66:25 78:16 104:11 124:20 129:17 142:13 167:28	<b>pardon</b> 8:16	
		<b>part</b> 12:21 17:6 24:5 31:12 63:9 75:20 79:13, 16,19 84:27 112:17 121:10 131:11 133:14 168:23 172:27 193:23 196:10 199:7 200:1 221:17 230:18 236:25	
		<b>participate</b> 227:18 266:18	



122:4,6 129:10,15,18, 22,23,26 130:5 131:4,8 136:19,24,27 137:1,17, 18,22 138:8,17,20,21 139:6 141:3,10,24 142:1,5,15 149:8 150:1, 13,15,19,20,24,28 151:3,13,20,21,24 155:5,6,9 157:2,26 158:13,23 159:1,9,16, 23,25 160:1 163:5,9,19, 25 164:7,10,11,26 165:2 166:2,17,23,26 167:23 168:13,14 170:27 175:17,28 176:13,20 177:17 182:24 189:18 192:25 195:17 204:22 206:27 207:24,25 230:19,20 231:1,9,13,24 232:11 234:14 235:12 236:16 237:7 241:1,23 272:14	<b>placement</b> 199:25 <b>places</b> 101:5 103:24 221:3 <b>plan</b> 14:16,22 27:13 28:18 29:24 30:22,23 101:13 103:23 104:12 109:20 114:11,16 118:6,17 119:2,23 121:22 122:12 129:19, 24 130:2,6,7,23,24,28 137:12,19 138:12 142:3,4 144:19,28 145:13 157:1 158:2 162:4,11 164:3,9 166:25 186:4,6 187:25 190:24,27 191:15 193:3 194:5,19 196:19 199:1 200:18 210:7 213:2 221:12,17 222:9,18,24 223:14 230:10 233:9 241:3 270:15 272:6 <b>planned</b> 14:21 17:13 30:24 105:6 111:13 118:5 150:26 151:13 193:2 <b>planning</b> 27:3,9 <b>plans</b> 13:1 24:13 29:10 104:3 110:10,21 172:20 241:9 <b>playbook</b> 192:4 <b>played</b> 27:3 <b>pleading</b> 128:16 <b>pleased</b> 123:7 <b>point</b> 7:20 9:25 14:18 15:2 23:18 25:12 27:19 28:17 30:16,18 31:8 33:25 34:8 62:23 70:16 72:24 73:1 75:6,12 87:19 90:14 92:5,25 102:19 123:25 130:13 140:19 156:22 158:21 159:14 185:4 190:20 200:3 204:3 205:24 206:24 211:10 213:11 220:28 221:10,21 241:9 <b>pointed</b> 126:8 <b>points</b> 18:11 140:18 175:5 178:13 <b>policies</b> 156:9	<b>policy</b> 145:11 <b>poor</b> 31:9 32:24 208:1 <b>population</b> 220:5 <b>portion</b> 85:11 120:18 144:12 184:6 189:11 198:10,19 <b>portions</b> 85:7 94:10 <b>portrayed</b> 155:8 <b>position</b> 21:25 74:5 98:26 112:22 122:8 165:25 269:24 <b>positive</b> 95:5 96:3 <b>possibility</b> 240:25 <b>post</b> 23:18,24 70:14 80:7 85:16 112:20 131:4 168:7 177:12 195:14 <b>post-april</b> 195:15 <b>post-divestiture</b> 83:24 <b>post-hearing</b> 71:1,8, 24 72:23 75:20 125:21 273:17 <b>post-paid</b> 156:10 163:12 <b>post-shutdown</b> 79:6 <b>post-trial</b> 227:21 238:14 274:17 275:6 276:27 <b>posted</b> 132:4 <b>postpaid</b> 83:18 130:1 <b>potential</b> 172:7 208:16 209:24 <b>potentialed</b> 190:26 <b>potentially</b> 136:12 186:19 233:13 271:9 <b>powerful</b> 28:3 29:8 <b>practicable</b> 142:12 <b>practical</b> 70:11 <b>pragmatic</b> 70:12 142:13 <b>pre-filed</b> 155:3 158:9, 18 176:13	<b>pre-paid</b> 12:24 118:1,4 183:17 184:8,28 185:5 191:22 <b>predict</b> 88:2 <b>predicted</b> 211:1,7 <b>prefer</b> 85:2 197:17 <b>premarked</b> 9:28 10:2 20:5 <b>prematurely</b> 175:1 <b>prepaid</b> 16:2 23:3 83:2, 14,25 84:1,4 85:23 89:15,22 90:5 172:26 <b>preparation</b> 150:21 178:19 <b>prepare</b> 78:5 111:2 <b>prepared</b> 7:14 10:17 123:28 146:7 241:3 <b>present</b> 125:26,28 276:24 <b>presentable</b> 106:27 <b>presentation</b> 74:13 106:19,27 <b>presented</b> 8:12 12:2 13:2 28:26 101:10 128:15 222:10 225:11 <b>preserve</b> 91:25 <b>president</b> 11:22 21:27 27:5 175:8 227:1 <b>presiding</b> 7:13 9:21 21:9 226:16 <b>press</b> 91:22 179:19,21 <b>pressure</b> 12:9 <b>pressures</b> 19:24 <b>previous</b> 163:6 <b>previously</b> 9:20 11:23 13:2 20:6 66:6 89:2 94:14 149:4 226:15 227:5 <b>prewritten</b> 146:18 154:22 <b>primarily</b> 120:24 221:10 <b>primary</b> 77:5
--	---	---	---

<b>printed</b> 97:20	<b>prohibitive</b> 226:3	106:28 107:3 169:16	98:18 105:17 108:8,10
<b>printout</b> 189:10	<b>project</b> 88:2 210:13	170:1,5,8,24,25 171:13	116:23 117:11,12,20
<b>prior</b> 6:8 10:25 12:3	<b>prominent</b> 169:3	172:6,9 179:11,14	119:20,27 123:1 124:28
15:11,28 16:3 18:24	<b>promise</b> 12:15 18:25	194:28 197:16 198:9,19	126:12,15 127:19
22:3 28:11 66:13,21	19:1 72:15 73:26	227:16	128:3,6,25 134:26
74:12,13 75:7 80:25	<b>promised</b> 16:10 74:10	<b>publicly</b> 178:22,24,25	135:15,17,28 137:7
81:7 88:23 89:13,17	<b>prospect</b> 114:9 118:19	202:4	139:16,18,20 140:2
90:25 91:13 93:16	<b>protect</b> 113:23 213:13	<b>pull</b> 132:2 181:16	141:19,20,22,27 147:7,
95:16 108:1 122:25	<b>protected</b> 120:27	<b>pulling</b> 132:1 171:4	8,24 152:21 153:1
124:24 125:15 126:18,	<b>provide</b> 5:27 7:14	<b>purchase</b> 131:16	156:7 157:12 158:8,15
19 127:13 128:20	23:17,21 28:10,13	132:15 135:20,21	161:13,23,25 164:17
147:3,7 152:22 156:3	29:22 31:18 66:11,20	136:14 227:14 230:11,	165:8,10,16,24 166:10,
159:18,19 163:21 199:9	67:10,19 69:4 75:23	25 231:3,17 232:10,16,	13,20,21 167:17,20
222:1 230:1 233:16	79:18 84:18 86:9 90:4	20,25,28 233:11	168:19,21,24,26,27
268:25	92:28 93:14 117:17	268:10,20,21 269:7,9	169:6 173:17,21 174:5
<b>private</b> 21:1	126:16,21 168:6 176:28	<b>purchased</b> 134:4	176:8,10,25 178:5,12
<b>privilege</b> 10:14 74:3	187:14,17,20 192:16	236:1	179:7 180:4 183:6,10
<b>problem</b> 24:25 65:24	193:6 204:16,20 209:8,	<b>purchaser</b> 133:18	185:15,18 186:17
<b>proceed</b> 6:3 8:2 10:9	14 221:6 229:11	<b>purple</b> 95:2	188:14 189:15,24,25
19:6,10 76:3	<b>provided</b> 5:25 13:6	<b>purpose</b> 66:18 74:17	191:5 193:12,24,26
<b>proceeding</b> 7:7 8:28	15:27 20:4 23:28 64:4	77:28 79:2 125:1,19	198:1 201:15 204:25
9:4 10:16 20:11,15	66:27 67:4,12,17 70:16	126:20 177:3	221:12 222:23 236:28
25:20 74:18 93:16	80:28 82:11 83:15	<b>purposes</b> 158:3	237:18,22
123:18 124:11 171:21	87:23 89:12 91:20	<b>pursue</b> 145:14	<b>questioned</b> 6:11,24
174:27 178:9 219:27	102:6 116:13 117:9	<b>pursuing</b> 147:13	111:16
224:19 225:7,24,28	137:9 144:23 145:12	<b>put</b> 6:10 12:11,19 18:6	<b>questioning</b> 6:14,27
227:5,19 234:3,9 274:6,	151:17,18,21 153:13,19	64:24 73:19 75:13	123:21 147:14 169:26
10 279:4	159:21 160:2 166:5,23,	94:14 96:23 101:22	<b>questions</b> 8:1 19:7,9
<b>proceedings</b> 10:25	27 168:8 169:23,24	104:6 115:16 120:12	33:23 64:22,23 72:26
11:15 12:3,4 22:6 64:25	177:11 187:12 192:4,10	122:10 135:9 144:7	83:8 84:27 85:8 94:12
101:2 116:23 139:12	195:11,16 203:14,28	151:18 199:1,17 212:6	98:24 108:10 110:21
156:24 169:23	209:18 227:28	222:9,18,24 223:14	123:13,26 124:16 125:9
<b>proceeds</b> 14:2	<b>providing</b> 13:7 22:9,14	269:25 276:27	128:17,18 139:4 147:19
<b>process</b> 17:3,24 33:17	23:22,26 76:25 77:21	<b>putting</b> 236:24 276:12	153:4,14 169:19,22
73:8 89:27 109:5,12	85:15,26 113:11 147:20		185:22 188:2,4 189:14
111:17 113:17 120:7	172:6 192:19 209:6		205:26,27 206:3 211:9,
129:28 143:9 144:2	271:25		14,22 223:22 224:9
153:25 155:19,24	<b>provision</b> 65:12,13		237:14 240:8 241:6,13,
161:17,28 162:24	66:18 68:2,18 69:3		19 274:25
230:17	73:20,22,25 74:14 75:8		<b>quick</b> 29:22 161:5
<b>program</b> 109:2 110:24,	76:19 80:17 130:15		192:24 212:11
28 111:21,25 112:28	151:16 195:14 210:23		<b>quicker</b> 116:28
<b>progress</b> 30:18	233:5		<b>quickly</b> 27:2 83:6
<b>prohibited</b> 9:7 20:17	<b>provisions</b> 137:28		142:12 144:22
<b>prohibition</b> 8:23 20:1	168:4 268:28		<b>quietly</b> 24:20
225:19	<b>proviso</b> 133:25		<b>quote</b> 14:20 15:4,9,23
<b>prohibitions</b> 9:11	<b>provisos</b> 137:19		66:10,16 76:20 78:24
20:21 226:7	<b>public</b> 12:11 29:3,21		87:4 88:24 92:17,26
			101:27 102:2 107:8
			130:13 134:19 135:23
			140:24 141:25 143:3,5,
			25,26 149:3 152:23

**Q**

179:27 181:20 182:13, 20 183:16 220:1,14	188:14 191:2 198:2 202:26 205:26 206:3,7 211:9,14,17 224:9 238:12 270:15 271:10	<b>reasonableness</b> 71:14 72:18 74:21	<b>records</b> 94:15
<b>quoted</b> 149:14	<b>Ray's</b> 18:11 34:3 66:5 71:16 73:16 74:19 75:7 76:12 82:17 88:14 94:7 117:7 119:16 123:23 146:17 230:1 237:4,9	<b>reasons</b> 11:12 87:22 238:22	<b>redact</b> 65:10
<b>quotes</b> 147:10	<b>re-up</b> 191:22	<b>rebuttal</b> 83:13 102:20, 27 104:1	<b>redacted</b> 94:10 103:14 197:24
<b>quoting</b> 183:27	<b>reach</b> 28:14 191:18 209:4,7	<b>rebutting</b> 237:9	<b>redirect</b> 6:16 7:1
<hr/> <b>R</b> <hr/>	<b>reached</b> 69:21	<b>recall</b> 22:5,9,14 24:11 68:21 79:9,12 91:20 97:28 103:21 104:9 116:6,18,22 131:17 150:12 156:23 169:13 173:22 183:4 272:3,4	<b>reducing</b> 175:19
<b>radio</b> 95:12,14,19 202:28 203:3,5 204:9, 27,28 205:5,9,16,21,23	<b>reaction</b> 25:26 235:27	<b>receive</b> 235:1	<b>reform</b> 196:18 199:17
<b>radios</b> 201:7,27 202:13	<b>read</b> 64:9 83:4,6,9 85:3, 12 87:1 88:18 89:7 92:14 97:4 100:4,10 101:23 102:23 108:8,25 114:25 117:10,23 120:1 133:13 134:1,7 138:3 140:21 143:2,24 147:8, 12 148:28 153:1 154:1, 3,17 155:10,14 156:2 163:7 173:9 174:19 175:24 182:25 189:19, 21 191:3 197:1 198:19 225:4	<b>received</b> 8:18 195:5 225:15 235:15,20 236:4 277:25,27 278:1,3,14	<b>refarming</b> 102:26 103:11,22 117:13 212:12
<b>raise</b> 213:14	<b>reading</b> 25:27 100:12 108:7,27 120:3 138:24, 26 175:15 185:20 213:7 223:26	<b>receiving</b> 80:5	<b>refer</b> 13:20 20:4 64:13 141:3 219:22 224:1
<b>raise-your-hand</b> 7:11	<b>reads</b> 100:5 105:8 224:6	<b>recent</b> 17:8 32:19	<b>reference</b> 86:5 92:25 146:11 151:2 152:17,18 154:6 162:22 164:12,25 182:7 237:1
<b>raised</b> 18:21 126:3 153:14 195:17 274:3	<b>ready</b> 16:22 19:5 72:4 110:3 174:22 181:17	<b>recently</b> 172:12,17 175:6 207:20	<b>referenced</b> 93:28 162:9 164:14 208:3
<b>range</b> 31:28 93:26 97:2	<b>real</b> 148:1	<b>recess</b> 81:18 170:17	<b>references</b> 149:28 150:23 166:16,22 176:12
<b>rapid</b> 27:27	<b>realistically</b> 79:11	<b>Rechtschaffen</b> 6:12, 25 7:18,21 180:25 188:3 205:25 206:2,5 211:8,12 276:18,20	<b>referencing</b> 163:23 202:28 241:16
<b>rapidly</b> 142:6	<b>reason</b> 64:22 136:8 156:21 158:25 182:10 220:13 227:23 230:28 239:19	<b>recognize</b> 161:1	<b>referred</b> 78:18 84:1 103:13 131:12 138:9 165:22
<b>rate</b> 31:26	<b>reasonable</b> 66:12 67:14 69:5,19 70:4 71:4,5,20 72:7,20,21 73:2,7,12 74:6,11 78:20 79:26 80:19 116:14 165:5 177:2 207:22 209:10	<b>recognized</b> 7:12,13	<b>referring</b> 13:21 14:23 77:10 78:20 84:6 91:3 100:17,18 103:10 106:11 109:16 111:26 112:26 129:5 139:6 140:10 241:8
<b>rates</b> 209:14	<b>reasonableness</b> 71:14 72:18 74:21	<b>recollection</b> 68:1 96:27 97:11,16 169:10	<b>refers</b> 67:27 88:3,11 234:27
<b>Ray</b> 6:11 11:19,21,28 12:16 13:3,7 14:18 15:2,10,21 18:16 19:6, 11,12,15 21:14,19,22 24:18,19 33:20 62:26 66:8 68:1 69:12 73:20 76:18 81:8 82:5,9 84:25 86:28 88:19,22 91:24 92:13 94:16 98:17,20 100:28 101:11,20 119:21 122:15 123:25 124:8 125:12,28 126:5, 13,23 128:10 129:9 130:11 131:20 132:19, 25 133:11 135:6,14 138:3 139:18 140:4,17 141:16 142:16,28 143:22 144:14 145:23 146:21 147:26 148:7 149:16,22 150:14 151:1 153:11 154:18 155:27 157:8,27 159:12 160:8, 25,27 164:22 165:9 167:21 168:17 169:2,27 170:23 172:5 173:2 174:7 175:10 176:6,26 177:28 178:19 180:5 181:14 183:14 184:4,23	<b>record</b> 11:8 12:12 14:1 15:12 18:7,12,28 19:3 21:20 26:18 30:4,5,6 34:6,8 64:24 75:14 81:9,17 85:3 96:24 98:8,16 99:15 110:14 115:8 140:22 143:3,25 145:20 170:16,19 177:5,15 194:7 206:25 213:21 219:27 224:12, 14,15,17,26 226:27 231:20 233:24 236:23 237:22 239:4 241:27 242:2,4 266:13 276:13 279:3	<b>reflects</b> 220:19	<b>reformed</b> 220:24 223:6
	<b>recording</b> 8:27 9:3 20:10,14 225:24,27	<b>reformation</b> 196:18 199:17	<b>refresh</b> 97:16
		<b>reforming</b> 102:26 103:11,22 117:13 212:12	<b>regulatory</b> 228:17 229:17
		<b>reform</b> 196:18 199:17	<b>reinforce</b> 273:16
		<b>referred</b> 78:18 84:1 103:13 131:12 138:9 165:22	<b>reinstate</b> 111:19
		<b>referring</b> 13:21 14:23 77:10 78:20 84:6 91:3 100:17,18 103:10 106:11 109:16 111:26 112:26 129:5 139:6 140:10 241:8	<b>reiterate</b> 113:25 153:21

155:15	<b>rendered</b> 74:12	<b>require</b> 17:3 77:14,15 195:7	66:26 67:4,6,10 76:22 77:18 84:9 85:25 87:17 168:1
<b>reiterated</b> 15:2	<b>renders</b> 74:15	<b>required</b> 6:1 16:21,25 17:1 18:4 23:24 84:18 85:28 86:8 92:19 112:17 113:13 134:5,14 136:1 153:28 155:22 163:26 196:17,19 206:26 209:22,23	<b>responsive</b> 168:18
<b>relate</b> 18:1 208:22 211:23 223:23	<b>reneging</b> 236:14	<b>requirement</b> 127:3 177:24 232:27	<b>rest</b> 86:25
<b>related</b> 22:21 179:3 196:21 228:1	<b>renegotiate</b> 111:18	<b>requirements</b> 19:27	<b>restate</b> 165:13
<b>relates</b> 12:22 223:24	<b>repeat</b> 68:28 135:17 140:2 158:14 159:18 166:13 173:4,13 178:4 181:3 185:18 187:4,5	<b>requires</b> 29:14 114:2	<b>restricted</b> 9:12 20:23 163:11 226:8
<b>relating</b> 22:6	<b>repeated</b> 166:16 176:11	<b>requisite</b> 137:15	<b>result</b> 9:11 12:18 20:21 80:3,17 208:16 226:7 239:9
<b>relation</b> 27:8 159:22 160:13 177:22 180:15 222:8	<b>repeatedly</b> 11:6 18:6 129:14	<b>reread</b> 165:12 184:2	<b>resume</b> 81:16
<b>relationship</b> 73:10	<b>repeating</b> 158:26	<b>resided</b> 230:12	<b>resumed</b> 82:6
<b>relevance</b> 74:22 117:21	<b>repetitive</b> 30:11	<b>respect</b> 18:17 79:26 84:15 133:25	<b>retain</b> 120:17 144:12
<b>relevant</b> 33:23 184:6 239:8	<b>replicate</b> 164:4	<b>respectful</b> 74:23	<b>retained</b> 91:4 194:6
<b>reliability</b> 31:21	<b>replies</b> 275:8	<b>respectfully</b> 10:28 18:12	<b>retire</b> 192:8 209:3,6
<b>relied</b> 229:23	<b>reply</b> 266:24,27 275:15, 24 276:2	<b>respective</b> 114:8 151:25 172:13 177:7	<b>retired</b> 190:3 223:18
<b>rely</b> 182:15	<b>replying</b> 275:27	<b>respond</b> 125:23 135:1, 3,13 147:17 192:14	<b>retirement</b> 189:27 210:21
<b>relying</b> 236:8	<b>report</b> 21:8	<b>responded</b> 89:8	<b>return</b> 63:6
<b>remain</b> 233:9	<b>reporter</b> 10:18 34:5 76:5 83:7 93:8 132:17, 22 145:19 183:24 197:27	<b>responders</b> 32:18	<b>reveal</b> 92:27 103:22
<b>remained</b> 115:11	<b>reporter's</b> 110:8	<b>response</b> 8:3 11:3,12 72:2 106:13 112:18 124:18 127:16,21 128:11,12,24,27 129:2, 5 138:4,25,27 139:5,13 140:23 141:23 153:18 168:24 172:7 186:16 195:22,25 196:5 238:19 239:17 278:11,19	<b>revealing</b> 29:2,19
<b>remains</b> 202:11	<b>reporters</b> 7:6,15 76:1,2 274:13 276:21	<b>responsibile</b> 163:14	<b>reverse</b> 98:6 102:5
<b>remark</b> 71:23	<b>reposition</b> 165:13	<b>responsibilities</b> 78:4, 5	<b>review</b> 18:27 106:20 129:1 154:24 233:17,28 241:17
<b>remarks</b> 7:4,15,19,24 10:17 11:18 274:8	<b>represent</b> 10:15 189:9	<b>responsibility</b> 15:17 16:14,16 27:6 78:7 80:10 85:17,18,22 86:2 89:24 90:16,21 91:15, 17 114:4,5,7 156:12 188:25	<b>reviewed</b> 227:21
<b>remedy</b> 227:12,15 228:22	<b>representation</b> 101:12 124:18 232:2,9 233:8	<b>responsible</b> 27:9	<b>revise</b> 76:10
<b>remember</b> 104:5 128:4 150:3 163:3	<b>representations</b> 124:16,24 125:15 175:21		<b>Rice</b> 132:8 165:15 167:17 183:11 195:1
<b>remind</b> 22:25 25:4 65:22 96:7	<b>represented</b> 17:5 30:19		<b>riding</b> 172:15
<b>reminder</b> 277:7	<b>representing</b> 65:2 124:11		<b>right-hand</b> 212:21
<b>remote</b> 8:17 225:14	<b>repurpose</b> 223:19		<b>rightly</b> 175:5
<b>removal</b> 20:22 112:15 201:5	<b>request</b> 71:8 75:17 195:12		<b>rise</b> 7:26
<b>remove</b> 111:19 199:23 200:11,16,18,20 201:9, 17,20 202:12,13,18,19 204:10,16 205:18,20	<b>requested</b> 17:4 69:25 123:9 156:22		<b>road</b> 32:15
<b>removed</b> 201:12,23			<b>role</b> 27:1,3 99:21 228:15
			<b>roll</b> 199:3 211:28 213:6
			<b>rolled</b> 31:7
			<b>rolling</b> 29:24 30:15

<b>rollout</b> 102:10	<b>scenarios</b> 70:6 209:25	<b>serve</b> 175:4 202:23	<b>shorter</b> 137:18 235:13
<b>room</b> 266:18	<b>scheduled</b> 276:23	<b>served</b> 100:14 142:9	<b>shots</b> 9:5
<b>roughly</b> 188:11	<b>scheduling</b> 224:13	<b>service</b> 5:4,5,6,14,27 12:7,18 17:22 31:9 74:25 77:5 90:6 92:18 93:1,14 108:16 117:16, 17 120:22,25 134:6,15, 20 135:24 136:11 137:5 149:5 153:24 155:18 156:16,18 159:21 161:16,27 176:17 184:7 185:11 186:1,21 188:20 190:9 191:23 204:20 207:4 232:13 235:1 270:6,11 271:25	<b>show</b> 5:7 7:26 10:23 11:5 13:9,19 18:1,22 25:16,22 64:20 82:10 87:1 92:13 93:18 94:2 106:14 107:20 117:13 122:14 124:13,19 125:13 126:4,9 127:16, 22 128:12 132:19 138:5,28 139:28 140:24 141:23 147:9 148:12 149:3,9 178:1,8,22 179:4,12 180:6,18,23, 28 181:10,11,19 182:12 183:14,21 184:1,27 202:2 227:26 266:23
<b>row</b> 94:22 152:3	<b>scope</b> 168:25		
<b>rows</b> 94:23	<b>screen</b> 9:5 30:2 179:23		
<b>rule</b> 5:9 10:27 11:10 18:14 126:28 127:1,3 167:6,14 232:5 267:8 270:4,22 275:3 276:14 277:24	<b>screenshots</b> 20:16 226:1		
<b>rules</b> 8:15,22 225:18 232:23	<b>script</b> 123:19		
<b>Ruling</b> 7:25	<b>seal</b> 34:10 213:22 242:6	<b>serviced</b> 229:20	
<b>rulings</b> 171:20	<b>sealed</b> 34:12 62:20 213:24 219:18 242:8 266:9	<b>services</b> 5:13 23:8,10 27:22,28 28:11 31:3,10, 12,13,24 32:2,6,7,23 33:12 64:4,5,9 78:25 79:5 87:8 88:6 92:8 93:23 96:2 105:7,15 120:10 142:8 144:5 157:7,18 158:4 159:8 196:20 204:17 208:2 210:24 220:10,16 221:23 223:6	<b>showing</b> 18:7 73:15 98:20 132:26
<b>running</b> 23:12 74:6 116:20 187:16	<b>seamless</b> 5:19 107:10	<b>serving</b> 74:3 200:22 204:5	<b>shown</b> 97:23 147:5 150:5 220:19 221:13 222:21
<b>runs</b> 27:7	<b>section</b> 64:21 65:9,11, 17 66:1,2,9,24 76:19 77:28 78:24 79:22 80:3 133:1 134:12 135:20 154:19 189:14,21 233:4 234:26 268:17,20 271:14	<b>session</b> 29:3,21 34:2,9 82:1 101:8 103:15 197:16,18 224:24 241:13 242:5 278:18,24	<b>shows</b> 102:28 276:13
<b>rural</b> 28:15 183:19 184:10 185:1	<b>sections</b> 70:9 269:10	<b>set</b> 25:21 27:25 29:7 94:28 95:21,26 105:2 131:9 154:4 231:12,16	<b>shutdown</b> 13:26 15:14 16:27 17:20 66:14,22 67:24,25 68:3 69:4 78:20,28 79:8,26 80:15, 18 87:28 114:18 158:28 183:15 187:9 195:5 204:2 207:4 208:2 272:7
<hr/> <b>S</b> <hr/>	<b>secure</b> 31:16 190:24 192:17 193:19 201:1		<b>shutdowns</b> 77:25 78:19
<b>safety</b> 121:13 130:13, 18,19 131:2,7 137:3,20 138:20 145:7	<b>secured</b> 29:6		<b>shuts</b> 185:7,24 200:9
<b>sale</b> 268:25	<b>selected</b> 11:8 147:10		<b>shutting</b> 67:28 199:8 210:5 222:27 236:4
<b>sanctioned</b> 227:27	<b>self-interested</b> 19:2		<b>shy</b> 236:12
<b>sanctions</b> 9:11,14 20:21,25 226:7,10	<b>seller</b> 133:16,24		<b>sic</b> 117:6 139:26 162:27 167:18 172:10 183:11 190:26
<b>satellite</b> 27:23	<b>seller's</b> 133:20		
<b>satisfied</b> 12:27	<b>send</b> 10:18		
<b>satisfies</b> 75:17	<b>Senior</b> 99:24	<b>sets</b> 27:26 145:2	
<b>satisfy</b> 227:14	<b>sensitive</b> 104:8 213:12	<b>setting</b> 211:27	
<b>save</b> 188:7 239:9	<b>sentence</b> 11:9 66:10, 18,19 76:20 77:28 78:23 79:2,3 84:2 90:23 100:4 110:9 112:5 138:4,6 153:20 154:7, 11,14,17,19 155:13 156:1,13 157:4,24 184:3,18 234:11	<b>settings</b> 72:12	
<b>Saves</b> 164:19		<b>shadow</b> 31:15 32:24	
<b>saving</b> 197:7	<b>sentences</b> 66:9 141:6	<b>shake</b> 65:5	
<b>savings</b> 199:8 201:16 238:24	<b>separate</b> 203:4,5	<b>share</b> 71:22 109:6 112:6,12,20,26 113:3 139:23	
<b>Saw's</b> 98:26 100:2	<b>separated</b> 203:12	<b>shared</b> 9:20 20:7 132:4 226:15	
<b>scarce</b> 201:7	<b>series</b> 23:13	<b>short</b> 168:20	
<b>scenario</b> 186:19			

<b>side</b> 187:15 274:10	<b>skeptical</b> 71:21	32:26 33:9,11,14 92:20, 28 93:13,21,23,25,28 95:27 96:3,11 99:10 101:2,10,28 102:8,21, 26 103:2,5,7,11,13,21, 22 104:28 105:5,14 117:15,19,28 118:6,22, 24 119:6,23 120:19,20, 23 121:17,19 122:1,9 130:20 131:3 133:23 134:4,19 135:6,22 136:2,4,9,15,17 137:5, 11 145:12 153:23,27 155:17,21 156:15,26,27 157:5,9,15,18 158:2,3 196:18 199:17 201:14 202:6,22 204:19 211:23 212:5 213:4,6 220:5,6, 7,11,18,25 221:1,4,6, 15,18,22,27 222:13,20, 22,26 223:1,3,5,10,11, 15,19,24 229:25,28 230:11,15,17,21,26 231:4,7,14,25,27 232:6, 14,19,21,23 233:2,3,9, 14 268:22,23,25 270:25,28 271:28 272:1,22 273:20	223:12 229:20 233:22 234:12,17,24,28
<b>Sievert</b> 98:23 99:19	<b>skipped</b> 134:9	<b>Sprint's</b> 5:26 12:5,23 13:26 16:5 83:14 84:3 89:22 92:20 100:18,20 104:27 118:1,3 190:1,5 220:18	
<b>Sievert's</b> 99:17	<b>slide</b> 103:27 104:5,10, 11,16,21 106:10,12,20	<b>Sprint-cdma</b> 90:27	
<b>sign</b> 233:7	<b>slightly</b> 123:18	<b>stamina</b> 211:17	
<b>signatories</b> 79:23	<b>slow</b> 31:26	<b>stand</b> 18:16 82:6 156:18	
<b>signed</b> 70:3 71:19 80:12 167:27 168:10 180:25 206:23 211:4	<b>slowly</b> 7:15	<b>standard</b> 72:22	
<b>significant</b> 196:15	<b>small</b> 70:8,9 94:24 121:18 131:2 192:12 208:25 209:27	<b>standing</b> 232:3,13 233:10 268:24	
<b>signing</b> 69:13	<b>smaller</b> 187:19,20	<b>stands</b> 31:5 63:21 93:22	
<b>Silence</b> 278:20	<b>snippets</b> 19:3 107:1 147:20	<b>start</b> 100:3 109:3,4,5 211:24 228:27 277:10	
<b>SIM</b> 77:9,14 85:27 185:10,27 186:27 187:19 188:18	<b>sold</b> 156:28	<b>started</b> 228:13	
<b>similar</b> 163:24,28 192:22	<b>sole</b> 126:2	<b>starting</b> 89:8 155:13	
<b>simple</b> 77:14	<b>solely</b> 76:22 77:18	<b>starts</b> 119:17 152:21 161:14 184:6 196:10	
<b>simply</b> 33:14 64:6 104:2 126:4 169:28 187:24 189:10	<b>solemnly</b> 19:15	<b>state</b> 19:15 21:20 25:9 144:15 156:13 174:28 226:26	
<b>single</b> 74:24	<b>solution</b> 209:11	<b>stated</b> 67:1,21 88:23 105:4 119:8 129:27 141:23 149:4 152:22 159:2 182:19 183:1 207:7 221:26	
<b>sir</b> 8:20 131:25 171:2,7 174:10 181:27 182:25 183:4 189:2,4,7 190:13 193:26 196:8,25 268:13 269:5	<b>sort</b> 229:16	<b>statement</b> 6:6,8,9,20, 21,22 8:6 10:10 69:23 72:13 73:23 76:10 87:2, 17 88:4 92:10,15 93:5 107:27 136:4 137:23 149:18 159:19,20 163:16 167:12 170:24 171:13 172:7 173:1 174:19,24 179:19,20, 21,27 180:10 181:9 183:20 186:3 190:12,17 191:2 192:12 196:24, 27,28 198:2,4,21 223:4 239:11	
<b>site</b> 95:8,19 96:5 97:8 109:22 132:5,7 201:24, 26 202:1,18 204:21	<b>sought</b> 26:7	<b>statements</b> 5:10 15:11 17:9 25:18 26:17,23 126:7 127:8,15 138:7 141:1 163:10 165:7	
<b>site-specific</b> 94:25 202:17	<b>sound</b> 62:27,28		
<b>sites</b> 23:23,25,26,28 94:21 96:21,22,25 97:23 109:3 111:10 112:16,24 113:13 199:28 200:1,21 201:8 202:19 203:15 204:15, 23 205:11 208:4 222:13	<b>sounds</b> 170:6		
<b>sitting</b> 194:16	<b>sources</b> 202:22 204:20 223:2,13		
<b>situation</b> 192:18 193:14,28 209:13 211:5	<b>space</b> 192:20 199:22, 24 200:23 201:7		
<b>six-month</b> 69:13 70:2 159:24	<b>speak</b> 7:11,12,15,16 65:22 74:1,4 183:9		
<b>six-year</b> 220:28	<b>speaker</b> 125:5		
	<b>speaking</b> 93:20 96:28 165:25		
	<b>specific</b> 110:21 148:28 150:9 159:9 181:9 201:24 202:1 207:11 221:25 269:6		
	<b>specifically</b> 81:2 87:24 96:14 97:6 129:6 234:26 270:13		
	<b>spectral</b> 33:3,5 199:13		
	<b>spectrally</b> 33:2		
	<b>spectrum</b> 5:26,28 14:12,22 18:1 23:17		
	<b>spectrums</b> 222:7		
	<b>speeds</b> 28:4 31:24,27 33:4 221:7		
	<b>spend</b> 148:17		
	<b>spent</b> 25:28		
	<b>spreadsheet</b> 94:5 97:13,17,19,23 146:6		
	<b>sprint</b> 5:18 14:25,28 15:13 16:2 23:2 24:16 25:7 27:21 30:26 68:7, 14,23 83:2,18,25 84:1 89:15,18 90:5 91:4 94:21 96:19,21,22,24 97:8 99:1,8,12 101:3 104:13 105:9,10,12,14 106:1 107:6 108:14 109:11,13,26 112:16 113:15,18 114:9 116:19 118:8,11,15,18,19,24 119:24 120:7,9,10 130:1 137:16 144:2,4 156:10 162:12 163:12 164:6 181:7 182:21 189:26 203:14 212:4 219:25 220:24 221:28		

166:9 177:14 179:11,14 193:4 206:8,11	<b>submitted</b> 27:11 66:3, 6 79:12,19 86:14 97:28 98:21,27 99:28 128:11 149:25 152:5 153:6 154:27 158:18 207:17 241:9	117:16 118:7,24 119:7, 24 137:14 153:24 155:18 156:16 174:26 190:6 221:14,28 239:20 266:27 270:2	65:27 66:11 67:6,10,12 68:6,13,16,23 69:1,4,12 72:3 73:4 76:24 77:13, 20,23 78:4,14 79:25 80:7 83:27 84:17 86:3,8 87:3,21 88:24 89:25 90:18 92:4,16,27 99:2, 20,25 100:28 101:27 102:14,22,28 103:8,23 104:13 105:10,18,27 106:13 107:7,16 108:12,16,17 110:6 111:1,6,8 112:15 114:9 115:19 116:3,27 117:14 118:5 119:22 120:11 121:6,12 125:26 127:20,22 128:11 129:11,16 130:15 131:10 134:18 135:9,22 136:27 137:1,16,27 138:10,11,16 140:22, 25,28 141:4,22,25 142:3,4,10 144:5,15,21 145:5 148:21 149:4 150:27 151:17 152:14, 23 153:22 155:16 158:26,28 159:11 162:23 163:11 164:6 165:1,25,26 166:1 167:3,22,27 168:3 170:26 171:11 172:11 175:27 176:17 177:8,23 178:1,7,21,28 179:5,21, 26 180:14 181:4,7,12 182:16,21 185:7,9,24, 26 186:5,8,27 187:15 188:20 189:12 190:23 191:6,7,10 193:8,20,21 194:10 195:7,11,22,25 196:5 198:6 199:7 200:9,10 202:4 203:23 205:4,8,16 206:12 208:6,17 209:20 210:4 212:22 219:23,26,28 220:3,13,22 221:9 227:26,27 228:6,19 229:2 230:4,9,20 231:15,24 232:18,26 233:22 234:2,8,13,19 235:7,12,21 236:13,14 237:6,24 238:13,16,19, 23 239:9,18,26 240:3, 24 266:25,26 267:26 268:5,15 269:1 270:1,5 272:6 273:2,5 274:7 275:14 276:1,12,23
<b>states</b> 24:4 28:16,20 31:4 86:7 95:3 138:6 149:3 156:14 181:20 182:13	<b>subscriber</b> 185:9,26	<b>supported</b> 16:20 31:14 197:26 198:12 204:22	
<b>stating</b> 173:10	<b>subscribers</b> 73:3 76:24 77:20 84:16 229:23 234:25 235:1	<b>supports</b> 120:23	
<b>stayed</b> 99:4	<b>subsequent</b> 26:8,15	<b>supposedly</b> 18:24 87:4 92:16 101:27 107:7 115:20	
<b>Step</b> 111:3,4	<b>subsequently</b> 27:12 195:21	<b>Supreme</b> 160:14	
<b>steps</b> 111:12	<b>subsidized</b> 209:14	<b>surprise</b> 26:10	
<b>stimulated</b> 28:23	<b>substantial</b> 5:3 210:2	<b>surprised</b> 168:12 235:28	
<b>stimulating</b> 278:23	<b>success</b> 164:4 192:21	<b>suspect</b> 89:28	
<b>stop</b> 70:20 83:10,28 118:13 145:17 270:24	<b>successful</b> 164:1 206:13	<b>sustain</b> 176:3 237:26 274:4,11	
<b>stopped</b> 231:26	<b>successfully</b> 17:20 109:8 112:7 222:12	<b>Sustained</b> 150:8 167:16	
<b>stores</b> 190:22 191:23	<b>suffers</b> 109:18 113:20	<b>sustaining</b> 164:20	
<b>straightforward</b> 176:9	<b>sufficient</b> 110:2 113:11 122:2 136:4	<b>swear</b> 6:7,23 19:10	
<b>strand</b> 207:28	<b>suggest</b> 113:7 118:26	<b>sworn</b> 21:14 127:14 226:20	
<b>strategy</b> 237:15	<b>suggested</b> 145:5	<b>synergies</b> 196:17 197:10,13,25 198:11,27	
<b>stray</b> 65:5	<b>suggesting</b> 114:26	<b>synergy</b> 197:7	
<b>strayed</b> 109:14	<b>suggestion</b> 139:5,8	<b>synonymous</b> 64:15 66:23 96:10 183:3,7	
<b>strike</b> 274:21	<b>summarize</b> 13:12 27:2 113:25 176:6	<b>system</b> 33:18 113:26	
<b>string</b> 14:9	<b>summary</b> 24:1 147:1		
<b>striped</b> 109:16 113:20	<b>summation</b> 70:28		
<b>strong</b> 121:8 194:7	<b>sunset</b> 175:2,7 196:14 197:21 198:7,26 238:23	<b>T</b>	
<b>stronger</b> 185:3	<b>superfluous</b> 73:27,28	<b>T-</b> 105:11	
<b>struck</b> 130:26	<b>superior</b> 17:22	<b>T-MOBILE</b> 5:8,10,24 6:2,5,10,15,26,28 10:16,24 11:3,6,13,22 12:9,19 13:5,24,28 14:3,5,9,11,15,21 15:7, 15 16:10,13,17,21,25, 28 17:10,13,16,26 18:3, 6,14,26 21:14,24,26 22:1,2,22,27 23:6,13, 20,22 24:7,12,16 25:7, 17 26:22,25 27:20 29:17 63:11,14 64:4,5	
<b>structured</b> 63:17 159:10	<b>supplemental</b> 14:19 15:22 66:5 79:13 82:17, 20 86:14 88:10,15,22 94:7 98:1 102:15 117:7 149:25 152:4 211:24 212:14 223:27		
<b>struggling</b> 145:28 148:1	<b>support</b> 11:11 14:12,24 22:11,16 23:5,7,11 32:13 33:4 110:5		
<b>stuck</b> 209:23			
<b>stuff</b> 76:17			
<b>sub-spectrum</b> 144:27			
<b>subject</b> 24:13 126:28 133:24 151:1 170:4 181:26 182:1			
<b>submission</b> 73:17 98:14			
<b>submissions</b> 11:14			

277:27 278:1,3	164:16,21 165:17	133:27 141:9,28 150:12	17,18,20,27 159:3,15
<b>T-Mobile's</b> 5:16 6:18	166:14 167:19 168:16	177:6 181:25 228:28	161:2,9 163:3,7,22
10:10 12:5,22 13:1 14:7	169:1 170:20,22 171:5	234:16 268:8	164:27 166:4,17,24,27
17:6,9 18:24 102:1	172:4 173:19,25 174:4,	<b>terminate</b> 88:25	169:24 175:8 176:13,14
114:5 124:16,17,23,24	6 175:13 176:5 177:27	152:24 232:18 271:15	177:4,25 178:17,20
125:14,15 126:6 138:4,	178:5 183:12,26,28	<b>terminated</b> 90:3	180:13 181:6 183:4,6,8
7,27 141:1 157:8	184:5,22,25 187:28	159:22	187:19 199:27 200:25
172:20,24 173:12	188:9,13 193:25 194:9	<b>terms</b> 23:22 26:7 32:25	204:13 207:12,18
175:1,8,20 178:16	195:3 197:28 198:5,19	64:15 96:10 109:20	208:4,23 211:24 212:14
179:8,10 189:10 191:4	203:21 206:1 224:21	110:10 123:20 125:2	223:27 225:10 227:10,
194:17 196:2 220:15,17	226:21,23,25 236:27	177:4 188:26 191:21	11,17,22,28 230:2
239:17 267:18 275:15	237:3,19,23 238:1	195:13 198:28 241:20	233:16 237:5,9,13
277:15	239:16 240:7,10 241:14	<b>testified</b> 21:15 77:7	269:27 270:3 273:3,12
<b>T-MOBILE-01</b> 181:12	272:23 274:3 277:18	82:6 101:11 127:13	274:5,21
<b>T-MOBILE-02</b> 277:25	278:5,7	135:7 142:2 157:28	<b>text</b> 21:2 134:9 266:20
<b>T-MOBILE-03</b> 82:16	<b>takes</b> 200:16	158:12,22 160:9,11,12	<b>that(sic)</b> 162:7
<b>T-MOBILE-04</b> 88:14	<b>taking</b> 74:5 170:15	161:3 178:15 204:7,27	<b>theory</b> 69:15
<b>T-MOBILE-05</b> 94:3	<b>talk</b> 27:19 72:11 107:21	206:17 226:20 227:4	<b>thereof</b> 179:12
<b>T-MOBILE-06</b> 98:13	110:16 128:15,19	238:12 274:24	<b>thing</b> 64:10 73:13 104:7
<b>T-MOBILE-08</b> 103:27	139:13 159:8 163:19	<b>testify</b> 19:22 125:18	148:23,26 162:12
<b>T-MOBILE-09</b> 108:2	271:17 274:17 275:6	129:14 130:11 134:25	173:28 192:3 207:26
<b>T-MOBILE-10</b> 117:6	<b>talked</b> 14:3 63:8 76:18	139:14 172:2 227:7	273:23
<b>T-MOBILE-11</b> 119:15	115:27 116:11 149:20	240:23	<b>things</b> 14:9 73:12
277:25	150:15 154:23 210:19	<b>testifying</b> 19:28 22:10,	84:28 88:18 114:10
<b>T-MOBILE-SPRINT</b>	230:2	15 108:4 143:26 179:3	154:12 162:18 191:18
27:4	<b>talking</b> 65:14 67:23	<b>testimony</b> 6:18 8:11	199:14 200:18 210:24
<b>T-MOBILE/SPRINT</b>	102:7 104:3 111:24	11:15,25 14:17,20 15:3,	212:3 223:28 231:28
22:7 172:19,28 181:24	112:25 117:22 138:16	23,27,28 16:4,9 18:11,	236:24 271:5
182:4	152:7 160:18 176:7	23,25 19:16 21:8 22:10,	<b>thinking</b> 158:19 160:23
<b>T-MOBILE'S</b> 196:16	190:23 204:18 209:24	15 26:6,20 34:3 66:5	<b>thirds</b> 189:13
197:20	210:26 234:23 241:22	67:8,18 68:28 71:17	<b>thought</b> 71:20 185:20
<b>table</b> 94:22 102:26	<b>tamper</b> 21:8	73:17,21 74:13,19 75:7	273:9
103:11,22 211:27	<b>team</b> 27:7 29:16 99:3	76:12 79:10,14,20	<b>thousand</b> 94:23
212:12,16	<b>technical</b> 135:5	80:25 81:4,7 82:10,17,	203:15
<b>Taff-rice</b> 65:1,16	<b>technologies</b> 32:19,21	19,21 83:13,22 86:14	<b>thousands</b> 16:24
123:28 124:2,5,7,10	113:28 210:22	88:10,11,15,22,24 89:6,	97:25
125:10,11,22,25 126:22	<b>technologist</b> 141:8	12,13,17 90:12,25 91:8,	<b>thread</b> 135:18
128:2,5,9 129:8 132:3,	<b>technology</b> 11:22	10,21 94:7 97:18 98:2,	<b>three-</b> 232:11 240:28
6,9,11,23 133:7,9	21:27 24:26 27:6 28:4,	23 99:17,28 101:14	<b>three-fourths</b> 220:4
134:11,16,28 135:4,19	12 29:25 30:27 31:2,6,8	102:7,15,20,27 104:1	<b>three-page</b> 146:16
136:7 138:23,26 139:2,	32:4,7 33:1 99:1,8,11	107:21 108:1 109:16	<b>three-year</b> 14:4,26
19,25 140:3,11,12,16	142:10 175:9 192:7,9	114:21,25 116:12	15:8 23:18 109:1
141:21 142:24,25	209:3,5 223:18,20	117:7,9 119:17 121:25	110:23,28 111:14,22,
143:15,18,20 145:22	<b>telcos</b> 209:1	122:25 123:23 126:17,	25,28 112:1,28 114:15
146:3,14,16 147:17	<b>teleconference</b> 9:5	18,19,24,28 127:14	117:2 118:9,25 119:3,
148:6 150:7,8,11 151:8	226:1	128:20 129:9 131:13	10 121:1,7,28 122:4,6,
152:12 154:16 157:22	<b>tenuous</b> 11:10	136:25 137:10 142:19	11 129:15,18,21 130:5
158:16 160:7,24	<b>term</b> 64:17 66:25	144:14 146:18,19	131:4 136:13,27 138:8,
		147:1,4 149:19,25,26	
		150:16 152:5,23,28	
		153:17 154:22 155:3,8,	
		14 156:3,19 158:9,10,	



19 139:6 141:2,24 142:5,14 149:28 150:1, 13,19,20,24,28 151:12 155:9 157:2,26 163:4, 19 164:10,25 165:2,23 166:1,16,26 167:23 168:14 170:26 175:16, 22,28 176:12 177:14 195:8 207:24 220:27,28 221:19 223:24 230:9,19 231:1,13,24 234:7 236:15 272:13	<b>timing</b> 17:15 68:3 79:25 116:13 203:14 <b>tired</b> 274:13,14,16 <b>title</b> 64:8 226:27 267:5 <b>TMO-33</b> 142:21 <b>today</b> 10:14 11:17,27 12:18 13:4 25:15 32:13 73:16 74:9 75:23 99:2 104:18 120:20,24 122:23 124:15,25 125:4 126:21,24,28 127:11,15 135:10 142:3 144:16 164:27 168:20 171:12 177:3,25 178:15,20,28 179:9 180:12 194:16 197:16 199:27 230:3 233:17 236:26 276:6 <b>today's</b> 6:3 106:22 <b>told</b> 17:13 194:27 236:13 238:2 267:25 269:14,15,17 272:6,8 <b>Toller</b> 63:3 106:16,17, 26 131:28 132:13,18 139:23,27 140:5,7 142:23 143:17 171:4 266:14,20 275:21 277:3,7,13 <b>Tom</b> 229:16 <b>top</b> 105:2,4 221:8 <b>topic</b> 98:9 112:14 208:21 227:9,11 237:10 <b>topics</b> 25:19,21 <b>total</b> 136:21 228:24 <b>tower</b> 200:23 201:21 202:12,14 205:1,19 <b>towers</b> 16:24 96:20 108:13 110:26 111:11, 15 112:24 199:23,28 200:11 201:8,10,18 <b>Tracfone</b> 172:8 <b>Tracfone-verizon</b> 173:8 <b>track</b> 161:6 194:7 <b>tracking</b> 13:18 134:8 <b>traffic</b> 100:14 201:11, 21,25 202:1,5,10,20	<b>transaction</b> 23:19 26:3,8,14 27:8,11,25 28:6,23 29:7 30:17 70:15 177:13 210:21 <b>transcribe</b> 7:7 <b>transcript</b> 108:3 142:19 147:6 148:1 161:2,11 <b>transient</b> 183:19 184:10 185:1 <b>transit</b> 163:26 <b>transition</b> 23:10 108:20 119:25 138:19 160:13 175:22 210:4 230:19 <b>translate</b> 199:14 <b>transmission</b> 108:18, 21 <b>transmit</b> 201:27 <b>treatment</b> 163:11 164:2 <b>tremendous</b> 238:24 <b>trial</b> 22:19 <b>tribunal</b> 18:19 <b>trouble</b> 146:11 164:19 <b>troubled</b> 209:21 <b>true</b> 93:4 98:6 102:5 136:28 145:8 273:24 <b>truth</b> 19:18,19 <b>truthful</b> 11:13 12:20 26:19 114:21 122:24 123:2,4 125:4 127:6,17 154:28 190:16 <b>TSA</b> 187:17 <b>turn</b> 140:9 147:28 160:25 161:10 170:28 173:21,27 174:7,12,25 175:26 225:5 <b>TURN's</b> 174:24 <b>turned</b> 277:2 <b>two-and-a-half</b> 67:20 <b>two-megabytes-a-</b> <b>second</b> 31:26	<b>two-year</b> 130:14 131:8 133:27 137:22 138:20 155:5 207:25 <b>type</b> 33:7 102:21 121:9 <b>types</b> 99:10,11 103:2,7 105:5 <b>typically</b> 31:25 <hr/> <b>U</b> <hr/> <b>U.S.</b> 12:23 27:25 28:23 93:24 <b>ultimately</b> 16:28 192:8 200:18 <b>unavailable</b> 186:20 <b>unclear</b> 28:21 <b>unconfidential</b> 106:22 <b>undegraded</b> 107:10 <b>underlying</b> 16:20 <b>understand</b> 9:3,10,16 12:10 20:14,20 101:17 124:15,22 125:12 126:12,15,24,27 127:18 141:15 157:11 165:5,8, 9 166:11 167:5 168:10 171:10,15,27 174:1,17 178:27 179:2 181:22 193:4 195:4 207:10 212:16 225:27 226:6 228:22 233:20 274:1,2 <b>understanding</b> 71:13 124:13 126:1 229:22,27 230:3 270:14 271:10 <b>understood</b> 18:24 79:23 169:5 238:7 <b>undertaken</b> 111:13 <b>undertook</b> 74:11 <b>unfair</b> 16:9 147:9 155:26 171:26 <b>unfettered</b> 14:8 <b>unfold</b> 26:3,15 <b>unique</b> 27:26 <b>unit</b> 239:2 <b>United</b> 24:4 28:20 31:4
--	---	--	--

<b>unlike</b> 190:28	<b>version</b> 103:14 106:13 212:12	<b>wave</b> 103:4 105:9	<b>world</b> 128:21
<b>unmute</b> 125:8	<b>verus</b> 32:27	<b>ways</b> 29:12 77:8	<b>worse</b> 161:16,27
<b>unnecessary</b> 73:26	<b>vice</b> 227:1	<b>wealth</b> 202:22 204:19	<b>wrap-up</b> 203:20
<b>unreasonable</b> 164:28 165:27 176:16 177:2	<b>view</b> 70:4 71:22 74:11 114:22 178:7,22	<b>Webex</b> 7:12 8:8,12,18 9:4 20:15 224:20 225:7, 11,15,28	<b>write</b> 128:27 180:9
<b>update</b> 29:22	<b>views</b> 178:1	<b>website</b> 132:2 146:5 189:11,12	<b>writing</b> 83:5 236:17
<b>upgrade</b> 5:19 17:1,18 77:8 80:5 84:10 190:7 199:25 222:15	<b>violate</b> 276:14	<b>weight</b> 269:25	<b>written</b> 7:14 22:9,14 26:5 79:20 81:3 102:6 133:17 153:6,10,12,17 155:3 178:17 185:14
<b>upgraded</b> 190:20 193:19	<b>violating</b> 271:14	<b>welfare</b> 170:9	<b>wrote</b> 153:5
<b>upgrades</b> 203:14	<b>violation</b> 9:10 10:26 11:11 20:20 226:6	<b>whatsoever</b> 105:24 122:21	<hr/> <b>Y</b> <hr/>
<b>upgrading</b> 29:16,26 30:15	<b>violations</b> 5:9	<b>wildland</b> 96:1	<b>year</b> 5:2 66:28 70:15 172:10 194:23 209:25
<b>uploaded</b> 146:5	<b>virtual</b> 7:7 9:6 63:22	<b>wireless</b> 5:4 12:7,18 22:4 23:6 28:10,20 29:17 31:3 32:9,10 89:23 172:8 185:11,28 192:6 202:1 220:10 236:3	<b>Year's</b> 185:12 186:1,25
<b>USA</b> 21:14	<b>visit</b> 16:24 191:23	<b>wished</b> 16:13	<b>years</b> 5:22 13:27 14:10, 13,14,17 16:11 17:7,11, 23 18:27 22:3 64:19 68:8,14,20,24 72:17 73:24,27 74:7,10 108:14,24 109:6 111:26 113:4,9 114:19 115:21 116:4,8,20,28 117:27 118:27 119:4,7 120:6, 13,19 121:12,17,20 122:20 129:23 130:9, 19,22,25 136:9,20 137:2,4,12,24,25 138:13,14 140:26 143:8 144:1,7,13,17 145:7,8 150:3,17 153:23 155:17,23 156:16,18, 21,28 157:7,15 158:2 162:16,23,26,28 163:1, 17 164:12 172:27 177:16 192:25 200:26 201:3 220:2 222:2,28 224:2,3,4,5,7 227:2 230:5,12,16,28 231:9 233:12,15 235:9,13,17, 19 237:8 239:21,28 240:5,26 268:22 270:20
<b>usage</b> 70:10	<b>visual</b> 20:16 226:2	<b>wishes</b> 147:7	
<b>users</b> 88:27 152:26	<b>voice</b> 31:12 32:6,22 100:13 120:24	<b>withdraw</b> 164:16	
<b>utilities</b> 170:8,25 173:28	<b>voiceover</b> 77:1,6 145:11	<b>withhold</b> 123:26	
<b>Utility</b> 169:3,7	<b>Volte</b> 76:26,28 77:5,11, 13,22 100:5,13 190:6	<b>witness's</b> 98:14	
<b>utilization</b> 33:9	<b>volume</b> 33:11 121:18 177:18 187:19,20 192:23	<b>witnesses</b> 8:18,24 225:14,20	
<b>utilize</b> 64:3	<b>volumes</b> 26:5 163:27	<b>word</b> 18:15 110:8 183:2	
<b>utilized</b> 105:15 136:3	<b>voluminous</b> 97:17	<b>words</b> 15:25 89:1 150:3 180:20 220:21 269:6	
<b>utilizing</b> 221:5	<hr/> <b>W</b> <hr/>	<b>work</b> 14:6 17:11 29:15 73:22 74:26 77:4,12 78:10 80:13 107:25 111:1,11 112:19,26,27 117:2 121:9 130:3 138:13 144:22 150:18 162:17,23 163:2,18 164:8 187:16 191:26 207:20 209:13,19,22,23 231:8	
<b>utterly</b> 173:13		<b>worked</b> 16:16 17:25 22:3 74:28 86:19 106:26 114:10 144:20	<b>yesterday</b> 132:5
<hr/> <b>V</b> <hr/>		<b>working</b> 74:25 75:2 78:14	<b>York</b> 160:14 161:4,9
<b>validity</b> 233:1	<b>wait</b> 82:23 183:22	<b>works</b> 113:26 270:4	
<b>valve</b> 121:13 130:14, 18,19 131:2,7 137:3,20 138:20 145:7	<b>waited</b> 168:7		
<b>variations</b> 150:2	<b>waiting</b> 19:12 140:3		
<b>vastly</b> 12:17 17:21	<b>wake</b> 185:12 186:1		
<b>verbal</b> 26:5 102:6 178:17	<b>walk</b> 13:7		
<b>verbally</b> 236:17	<b>walked</b> 149:23 152:1		
<b>verify</b> 106:16	<b>walking</b> 148:19		
<b>Verizon</b> 12:9 172:8,11 175:6	<b>wanted</b> 12:10,27 65:3,4 84:22 114:28 115:10 124:12 125:27 206:15 207:28 228:22 230:26 276:25		
	<b>waste</b> 170:11 239:13		